

IMPLEMENTATION OF THE HELSINKI ACCORDS

MIGRANT FARMWORKERS IN THE UNITED STATES

**Briefings of the
Commission on Security and Cooperation in Europe
Washington, DC**

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PREFACE

The Commission on Security and Cooperation in Europe is mandated by law to monitor and encourage human rights compliance by signatories of the Helsinki Final Act of 1975. The Commission is composed of nine Senate members, nine House members and three presidential appointees from the Departments of State, Commerce and Defense. The Helsinki Commission issues reports, holds hearings, organizes bipartisan Congressional delegations to examine CSCE issues in participating states and participates on the U.S. delegation to all CSCE meetings.

In November 1979, the Commission published a comprehensive domestic compliance report entitled - Fulfilling Our Promises: The United States and the Helsinki Final Act. The Commission undertook the project for numerous reasons. First, it believes that the United States should work with other signatory nations to identify and acknowledge problems within our respective societies and attempt to find solutions to those problems. Second, as the Final Act encourages multilateral scrutiny of each state's implementation of CSCE principles, self-examination increases the credibility of the United States to raise concerns regarding non-compliance by other states. Finally, the Commission is often called upon to respond to charges of U.S. non-compliance and the 1979 domestic compliance report has served as a useful data base. This report was subsequently updated in 1981, and was the subject of Commission hearings. Additionally, the Commission has examined U.S. visa laws as well as facilitated access by Soviet doctors to examine a U.S. prisoner alleged not to be receiving proper medical care. In August 1990, the Commission published a report entitled "Homelessness in the United States." This report was a comprehensive and critical look at problems of homelessness in America and was in part a response to sharp criticism from Warsaw Pact members made during CSCE meetings. The examination of migrant farmworker issues represents another segment of the Commission's ongoing review of U.S. compliance with CSCE concerns and was undertaken with similar considerations in mind.

Language pertaining to migrant workers is found in all major CSCE documents. In July 1992, the United States joined 51 other nations in promising to abide by the Helsinki Document, adopted at a summit of Heads of State and Government. The meeting was notable as the first large-scale CSCE follow-up meeting since the collapse of the communist regimes in Eastern Europe and the Soviet Union and included more than a dozen new participating States. The Helsinki Document pronounces that "human rights and fundamental freedoms are universal, that they are also enjoyed by migrant workers wherever they live . . ." Participating States would seek to "create the conditions for promoting equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for lawfully residing and working migrant workers."

Additionally, last month a CSCE conference convened in Warsaw, Poland to examine migration issues. At this meeting, participants from over 40 states examined various aspects of economic induced migration. Another CSCE forum focussing specifically on migrant labor issues is expected to convene sometime in 1994. While the status and character of European and United States migrant workers are vastly different, many of the problems facing both populations stem from basic socio-economic and political factors. But what is common to both is the need for greater governmental involvement and commitment to addressing the problems facing these growing populations.

The first stages of the Commission project on migrant labor were initiated in December 1991 as staff fact-finding missions to agricultural regions of the American South and West. On these visits, staff members met State, Federal and local officials, farmworker advocates, service providers, legal assistance groups, farmworkers and employers. Labor camps, health, housing and other facilities utilized by migrant farmworker families were examined.

The second stage of the Commission project was a series of public briefings examining specific segments of the farmworker population and areas of concern in order to raise public awareness of the critical problems encountered by migrant and seasonal farmworkers and their families. Over the course of five days of public hearings the Commission: presented an overview of farm labor economics, demographics and living conditions and examined relevant government operated programs; focussed upon health and safety areas, including the effects of pesticides on agricultural labor and consumers; highlighted farmworker children's issues, including education and daycare; studied the difficult challenges facing farmworker women and their families; and, explored possible strategies for addressing problems facing farmworkers, their families and their employers.

This report is a compilation of those proceedings, written statements and other materials submitted for the record over the course of the briefings and during the fact-finding missions. The following recommendations reflect discussions conducted during the briefings and research undertaken during the Commission's examination. In bringing attention to the problems facing farmworkers and their employers, it is the Commission's hope that both the public and government will join together to alleviate the suffering and injustices that permeate migrant farmworker communities. The recommendations are neither comprehensive nor exclusive, but are put forward as guidelines that at a minimum seem critical to any serious attempt to redress circumstances that economically imprison farmworkers and their families, and strip them of their human dignity.

RECOMMENDATIONS

While identification of problem areas has been a goal of the Commission briefings, a more primary objective has been to elicit possible solutions to problems facing migrant farmworkers. Recommendations offered throughout the course of the briefings address a wide array of concerns. Panelist statements and materials submitted in the appendixes provide a litany of suggested solutions and strategies. And while many of the suggestions would likely have a positive impact on the situation, their implementation remains dependent upon political will and a concordant commitment of resources to see that such reforms are effectively enacted.

The following recommendations reflect panelist proposals and the discussions of problems raised during the Commission briefings.

REFORM AND ENFORCEMENT OF LABOR LAWS

1. Federal and state governments must strictly enforce existing laws designed to protect farmworkers.
2. Agricultural employers who utilize farm labor contractors should be held liable for violations by those contractors of the Migrant and Seasonal Agricultural Protection Act and other relevant laws and regulations.
3. Higher fines should be levied against growers and contractors who violate the Migrant and Seasonal Agricultural Protection Act. Prison terms should be mandated for repeat offenders.
4. Federal and state licensing procedures for farm labor contractors should be changed to make it impossible for repeat violators to resecure licenses and continue to abuse workers. Conspiring with other persons, including family members, to evade licensing restrictions should be made a criminal violation.
5. Farmworkers and their family members who seek information about their rights or help in defending those rights must be protected from retaliation by employers.
6. The H-2A and H-2B visa programs, which enable agricultural employers to import temporary foreign workers into the United States, should be discontinued because domestic workers are displaced and foreign workers have been subject to abuse. If the program is to continue, the Department of Labor must be required to improve enforcement of existing protections and revise policies to prevent future abuses.

7. Farmworkers should receive protection for organizing and be allowed to bargain collectively. Like other U.S. workers, these protections should be mandated by law.
8. The Fair Labor Standards Act, which establishes minimum wage and overtime protection, should be amended to provide the same coverage and rights to farmworkers as are provided to other workers.
9. Civil money penalties collected by the Department of Labor for violations of the Migrant and Seasonal Agricultural Protection Act should be used for programs which assist migrant farmworkers and their families.
10. Government enforcement personnel should inspect migrant housing before and during each season. Governments should offer incentives to growers, contractors, and local communities to provide decent housing for migrant and seasonal farmworkers.

COORDINATION AND PROVISION OF SERVICES

1. Efforts must be made to eliminate discrimination and remove cultural barriers that prevent migrant farmworkers from benefiting from social, health and other services available in the communities where they work. One way to accomplish this is for relevant organizations at all levels to hire multi-lingual personnel.
2. Farmworkers should be provided with information about their rights and benefits under the law in a language that they understand.
3. A federal interagency office should be established to coordinate the development and implementation of programs serving farmworkers and growers. Accomplishing this goal will require high-level federal leadership and political will.
4. Federal, state and local officials should work together more closely, especially in coordinating enforcement activities.
5. The U.S. Department of Labor should establish national and regional databases to collect information on farmworker populations. Such databases could help local, state and federal governments direct services to farmworkers more efficiently and make enforcement efforts more cost effective.
6. Innovative funding strategies and incentives should be developed at all levels of government so that groups and individuals can more easily provide housing and other facilities for migrant farmworkers and their families.

HEALTH AND SAFETY

1. Persons who risk lives by transporting farmworkers in unsafe vehicles or in an unsafe manner (e.g., overcrowding vans, removing seats, or driving while intoxicated) should face stiff penalties. Vehicles used to transport farmworkers must be properly insured and regularly inspected.
2. Migrant farmworkers' access to health care should be expanded. This includes access to health care facilities and providers and health insurance coverage.
3. Farmworkers should have the legal right to know what pesticides are used at their workplace. Currently, there is no comprehensive federal right-to-know for farmworkers.
4. Federal and state governments should strictly enforce laws and regulations governing the use and application of pesticides and field reentry intervals. Integrated pest management strategies should be developed further as alternatives to using pesticides.
5. Workplace health and safety laws and regulations, such as the field sanitation standard, must be strictly enforced.

FAMILIES AND EDUCATION

1. The Fair Labor Standards Act must be amended to provide the same protection to farmworker children as that afforded other children under the Act.
2. Government educational agencies and school systems should develop ways to make it easier for migrant children to register and attend schools in each community to which their family travels to work.
3. School administrators and staff should make greater efforts to integrate migrant children into classes and other school activities.
4. Greater efforts, at all levels of government and among employers, must be taken to provide adequate daycare for migrant children.

In Memoriam:

CESAR CHAVEZ, tireless fighter on behalf of promoting human rights and protecting human dignity for all farmworkers and heroic leader of *la lucha*, the struggle.

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STATUS OF MIGRANT FARMWORKERS IN THE UNITED STATES

Monday, July 20, 1992.

Washington, DC.

The Commission met in room 2128 of the Rayburn House Office Building, South Capitol Street and Independence Avenue, SW, Washington, DC, at 1 p.m., Jane Fisher, Deputy Staff Director, and Mary Sue Hafner, Deputy Staff Director and General Counsel, presiding.

Present: Jane Fisher, Deputy Staff Director and Mary Sue Hafner, Deputy Staff Director; John Fraser, Department of Labor; Ed Kissam, Consultant; Carlos Marentes, Union of Border Farmworkers; Roger C. Rosenthal, Migrant Legal Action Program; Mike Amitay and Vinca Showalter, Staff Assistants.

Ms. Fisher. My name is Jane Fisher. I'm Deputy Staff Director of the Helsinki Commission, and I'll be giving you a few brief remarks on what the Commission does. Then I will turn the panel over to my colleague, Mary Sue Hafner, who is also Deputy Staff Director and General Counsel of the Commission.

The Commission was founded in 1976 to monitor compliance with the Helsinki Accords which were signed in 1975. The traditional focus had been on Eastern Europe and the Soviet Union in terms of their compliance with their Helsinki commitments. More recently, particularly since the fall of the Berlin Wall, the Commission has been looking at its own domestic compliance record, although we did do one comprehensive report in the early years of the Commission on an overall look at our domestic compliance record.

About 2 years ago, we did a comprehensive study of homelessness in the United States, and more recently we decided to look at the issue of migrant workers because of the extensive language which is contained in each Helsinki document, beginning with the Helsinki Final Act.

You will find those references in a handout that we have out in the front. As you can see, they are fairly extensive.

The Commission does not have legislative authority. Our purpose is to look at issues, to raise public awareness of these issues, to examine these issues from all viewpoints. We try very hard to get the perspective of all sides on each issue. We hold hearings. We hold briefings of the sort that we are doing today, and we issue reports.

When we decided to look at the migrant worker issue, we started out by taking a staff trip down to central Florida, and from that trip we decided that we needed to do additional staff trips out to the southwest and to California.

Our purpose is not to take sides or point fingers. Our purpose is to listen to as many experts, expert in all the dimensions of this issue, as possible and, hopefully, at the end of this series of briefings that we are conducting, to have a better understanding of the issue, a better understanding from the perspective of the migrant worker's problems and a better understanding from the perspective of the communities at large.

Only in this way do we feel that we can come to solutions which will fairly address the problems. We did feel, from the first visit, that there were sufficient problems enough to warrant our continued look at this issue.

I would just reference one report that we used when we went down to Florida, a report that was done by former Secretary of Labor Elizabeth Dole. We found that this report which she had done after she had come back from Immokalee, FL, laid out the problems in fairly clear terms, and we were very impressed with the recommendations that she made in terms of addressing these problems.

We regret that no action seems to have been taken on this report, but we felt that it was a good starting point; because it was very balanced, and it took into account all sides.

So with that, I'm going to turn the panel over to my colleague, Ms. Hafner.

Ms. Hafner. I want to join my colleague in welcoming all of you here today. It is obvious from the turnout that this is a very troubling but very important human rights issue in not just the United States but internationally, and that is our purpose here today, to discuss that issue.

The Commission is very pleased to have with it today a very distinguished and very knowledgeable group of panelists that we have been able to assemble, which we hope will expound a rather wide range of views on this issue.

I would like to say at the outset, however, that one of our panelists, Elizabeth Whitley, who is the Assistant Director of the National Affairs Division of the American Farm Bureau, was unexpectedly unable to attend today because of a personal emergency.

It appears that the Bureau was unable to send anyone in her place, but we have been told that a statement by Ms. Whitley will be made available. It is not here at this point. However, later on, upon receiving it, if you are interested in getting a copy of that statement, we'll be more than happy to make it available to you.

At this point, I would like to introduce our panelists, and I will do so in the order in which we will ask them to speak. We have asked each of our panelists to speak for about 5 to 7 minutes, at which time we would like to involve the audience a bit. We would ask that whatever questions you may have, ask them at the conclusion of the four presentations, and we would also ask that you come to the front of the room, and please give your name. If you are with an organization, tell us that organization.

Mr. John Fraser is currently the Deputy Administrator of the Wage and Hour Division of the Employment Standards Administration at the Department of Labor. He has served with the Department since 1976, and has previously served as Acting Assistant Secretary of the Employment Standards Administration.

He has also been responsible for the agency's implementation of its new functions under the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990. We have asked Mr. Fraser to address the historic role of the Federal government in migrant farmworker issues.

Also with us is Dr. Ed Kissam. He is a consultant on farm labor policy and migrant adult education issues. In 1989 and 1990 he directed the Farm Labor Supply Study for the U.S. Department of Labor and has also directed two case studies for the Commission on Agricultural Workers. Dr. Kissam has had experience with farmworker employment training programs. We have asked him to address migrant farmworker issues in both economic and demographic terms.

Also with us is Roger Rosenthal. He is the Executive Director of the Migrant Legal Action Program in Washington, DC, a position he has held since 1985. From 1980 to 1985 at that program he was staff attorney.

This organization is a national legal services organization which supports programs in 48 States as well as Puerto Rico. It represents indigent farmworkers on a variety of issues related to living and working conditions.

We have asked Mr. Rosenthal to outline the legal foundations designed to protect migrant farmworkers in the United States.

Also with us is Mr. Carlos Marentes. He is presently Director of the Border Agricultural Workers Union in El Paso, TX, which he helped found in 1983. Mr. Marentes is himself a former farmworker and has been active in the farm labor movement since 1977.

From 1977 through 1983 he organized for the Texas Farmworker's Union. Mr. Marentes who, by the way, met with the Commission staff in Texas will outline basic problems confronting farmworkers, including the difficulties that they face in organizing themselves.

We will begin our discussion with Mr. Fraser.

Mr. Fraser. Thank you, Mary Sue. Good afternoon, ladies and gentlemen.

I thought the best way in which I could address the issues that I've been asked to discuss this afternoon is to basically provide a catalogue of Federal

programs that are designed to meet the needs of migrant and seasonal agricultural workers, in recognition of the special challenges that they face in their employment and in maintaining employment due to the generally short term nature of the jobs that they take, the highly mobile nature of the workforce, and the fact that increasingly the workforce is unauthorized to work in this country.

I am going to try to do that briefly this afternoon to catalogue the Federal programs that address those needs. I am not an expert on all of these programs, so if you have certain questions about some of them, I may have to get back to you with that information, especially those programs administered outside the Department of Labor.

Let me start, though, by talking about programs that are managed outside of the Department of Labor, which I'll come to toward the end, and start with migrant health programs.

There are two particular special programs, and that's really all I'm addressing this afternoon, special programs designed to meet the needs of migrant and seasonal agricultural workers.

The first of those, under the Public Health Service Act, is the Migrant Health Program administered by the Department of Health and Human Services. This is a program that establishes migrant health centers and provides funding to States to assist them in implementing and enforcing applicable and acceptable environmental health standards that apply to agricultural workers.

In addition, there is another special supplemental food program for women, infants, and children administered by the Department of Agriculture which has special provisions to provide nutritional assistance to migrant and seasonal agricultural farmworkers and their families, and include systems for certifying farmworkers for eligibility so that they don't experience interruptions in service or eligibility for benefits as they move from job to job and location to location.

There are special safety programs as well. There are certain Environmental Protection Agency standards that apply, especially in agriculture and especially with respect to pesticide exposure and application. The Department of Transportation maintains special standards relating to transportation safety requirements in the transporting of farmworkers where three or more farmworkers are transported 75 miles or more or across state lines.

Those special DOT safety standards provide standards applicable to both drivers and the vehicles in which farmworkers are transported.

There are a number of special education programs designed to meet the needs of migrant and seasonal agricultural workers as well. Of course, the Head Start program which is administered in HHS has special provisions for the children of migrant workers.

There are a number of programs administered by the Department of Education as well. The basic State Formula Grant Program for Migrant

Education, among other things, maintains a migrant student record transfer system so that the educational status of migrant children can be tracked as they move with their families from job to job, as they do during the summer and fall months.

There is a college assistant migrant program administered by the Department of Education as well, which provides academic support, financial and housing assistance for the children of migrant workers.

The Adult Migrant Farmworker and Immigration Education Act administered by DOE provides adult education services for farmworkers and their families, and the Handicapped Migratory and Seasonal Farmworker Vocational and Rehabilitation Services Program, also administered by the Department of Education, provides special services for disabled farmworkers, particularly those who suffer disability as a result of a work-related injury.

There are a couple of other Federal programs worth noting that are administered outside of the Department of Labor, Social Security being one. Any employer in agriculture who employs more than 20 agricultural workers or pays more than 20 days of wages to agricultural workers is required to withhold and deposit Social Security taxes on behalf of those workers, keep records regarding their employment and withholding of those taxes.

In our Department of Labor enforcement activity we have seen several problems relating either to the failure to withhold, in other words payment of straight cash wages under the table, or where withholding occurs, the failure to pay over those taxes to the IRS to credit the worker's account.

We are attempting, in a cooperative effort with Social Security and IRS, to develop some special compliance assistance and enforcement programs which will deal with what seems to be a fairly pervasive problem.

Finally, in addition to the Social Security provisions, there are housing provisions under the Farm Labor Housing Loan and Grant Program administered by USDA, which exists to make available financing for the development or the acquisition of land to develop farmworker housing. But I think, as everyone will indicate today, the adequacy of housing for migrant and seasonal farmworkers is certainly a challenge.

With respect to Department of Labor programs, I'm going to describe these for you in three general categories, labor standards protections, employment services, and other programs that we administer that are intended to meet the needs of agricultural workers.

Let me start with the labor standards provisions. The Wage and Hour Division in the Employment Standards Administration, which I represent here today, administers most of these laws.

The first of these is the Fair Labor Standards Act. That is the general law that provides minimum wage and child labor protection to workers throughout the United States.

The FLSA applies in agriculture. In most cases, there is a threshold of 500 person days of employment before the Fair Labor Standards Act applies,

but that brings to bear minimum wage and record keeping requirements, requiring the current \$4.25 per hour minimum wage to be paid, although there is an overtime exemption for most agricultural employment. Most agricultural workers do not have to be paid overtime for hours over 40 in a week.

In addition, the Fair Labor Standards Act brings child labor restrictions to bear in almost all agricultural employment except for employment of children on their family's farm, and those restrict the employment of young workers in agriculture who are 15 years of age and younger.

In addition to the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) was enacted in 1983. This is another set of labor standards law that my agency enforces, and it has several provisions.

It requires the registration of farm labor contractors and establishes certain standards for individuals to do business as farm labor contractors. It provides housing and transportation safety protection for farmworkers, and establishes obligations on employers who transport or house migrant and seasonal agricultural workers.

The law requires advance disclosure of wages and working conditions and makes those contractually enforceable standards. Finally, it establishes record keeping and disclosure requirements so that farmworkers need to be told in advance what they can expect to be paid, what the working conditions will be, and will be apprised exactly what they are paid, on what terms they are paid, and what deductions, if any, may be taken.

Those two laws, the Fair Labor Standards Act and MSPA, apply to agricultural employment in general in this country. There are a number of other laws, but one that I want to focus on a little bit here applies primarily to employers of foreign agricultural workers.

These are a relatively small number of workers who are allowed into the country each year from foreign countries to perform agricultural services of a temporary nature. This is called the H-2A program. I'm sure many of you are familiar with it.

This is administered within the Department of Labor jointly by my agency and the Employment and Training Administration, and it establishes labor standards that are applicable not only to temporary foreign agricultural workers but to any U.S. workers who are similarly employed.

So if an employer has both foreign and U.S. workers performing agricultural services, then the requirements of the H-2A program apply as well to the U.S. workers who are so employed.

Under the H-2A, program employers have to meet certain recruitment requirements in order to gain access to foreign workers and have to agree to provide a set of statutorily required labor standards that include a higher minimum wage than the Federal minimum.

They have to provide housing that meets standards, have to pay for transportation to and from employment, and are required to guarantee a

minimum amount of employment to these workers under the terms of their work contract.

In addition, as another program that results from immigration law, there is a "special agricultural worker" provision that derives from the special agricultural worker legalization provisions of the Immigration Reform and Control Act of 1986.

This is a set of requirements that employers of individuals legalized under the special agricultural worker program maintain records and report to the government about the amount of their employment of such workers in order to provide a basis for determinations by the Secretaries of Labor and Agriculture as to whether to admit additional foreign agricultural workers for employment in the United States, individuals who under the law are called "replenishment agricultural workers."

In the 3 years in which this program has been operating, there has been no determination of a shortage of agricultural labor and no authorization from the Secretaries to admit replenishment agricultural workers.

Of course, the employment eligibility verification or (I-9) requirements that generally apply to U.S. employers apply in agriculture as well, and those are enforced jointly between the Department of Labor and the Immigration and Naturalization Service under a memorandum of understanding between the two organizations.

In addition to those labor standards protections that apply especially to migrant agricultural workers, there are Occupational Safety and Health standards that apply and which have particular relevance in agriculture, to housing, to what are called temporary labor camps where migrant workers are often housed, for field sanitation (the provision of potable water and toilet and sanitary facilities in the fields), and other OSHA standards that relate to the use or storage of ammonia, farm machinery, tractors, and cotton dust exposure.

In the employment service area there are two or three programs I should mention to you, first those provided by the United States Employment Service, which operates in the Department of Labor's Employment and Training Administration.

The Employment Service provides job information, counseling, testing, job referral, training referral, placement services to the agricultural community, both agricultural workers and their employers.

The Employment Service has a special monitor/advocate program where individuals at the national, regional, and state levels serve to assure that the Employment Service is providing adequate and appropriate services to migrant and seasonal farmworkers, and the Monitor Advocate is, additionally, an advocate for benefits for those individuals.

Under the Job Training Partnership Act, there is a section of the law that provides grants to private and public nonprofit organizations to provide training and other employment-related services, and additional services to migrant and seasonal agricultural workers, such as transportation assistance,

nutritional assistance, housing assistance in emergencies, those kinds of activities.

There are a number of section 402 program agencies that receive grants to provide those kinds of services in local areas.

Finally, in the employment arena, unemployment insurance is available. Agricultural employers of 10 or more farmworkers during any 20 weeks, or who pay out \$20,000 a quarter in agricultural wages are required to pay unemployment insurance taxes and agricultural workers are eligible for benefits, unemployment benefits if they have sufficient employment to qualify under the particular requirements of state law.

There are other programs in the Department of Labor, some statistical/workforce programs in particular, which are intended to develop information so we have good or, certainly, a better information base on which to make policy decisions affecting our responsibilities to the agricultural workforce.

We have a database that we've developed over the years as a result of the reporting required for special agricultural workers, and the Department funds a National Agricultural Workers Survey (NAWS is the acronym for that), which is an effort to develop good, current information on the nature of the migrant and seasonal agricultural workforce.

In closing, I should describe how the Department goes about carrying out its enforcement responsibilities for the programs over which it has jurisdiction. This is done largely through what we call a Coordinated Enforcement Committee, and this committee operates at the national, regional and, recently, at the state level where all of the Departmental agencies who have responsibilities--my organization, the Employment and Training Administration, the Occupational Safety and Health Administration--work together to plan our enforcement activities so we get as broad a reach of enforcement as possible and eliminate duplication of effort, that we have as open and inclusive relationships with the community as possible--with agricultural employers, with farmworkers and their advocates, with community service organizations and church organizations that provide services to farmworkers--so that we know where the problems are and, to the best of our ability, bring the resources we have to bear to address those problems.

To give you a sense of the scope of these programs, let me relate some recent enforcement statistics from Fiscal 1991: My organization (Wage and Hour) conducted about 2,700 investigations in agriculture under the Fair Labor Standards Act, recovering about \$2.3 million in back wages owed to about 8,000 farmworkers. In addition, we conducted about 3,500 investigations under the Migrant and Seasonal Agricultural Worker Protection Act, and another 1,200 housing inspections, as a result of which we assessed a total of about \$1.6 million in civil money penalties for violations of MSPA.

OSHA, acting both as a Federal organization and through its state plan agencies, conducted about 2,700 inspections in agriculture, including almost

600 field sanitation compliance inspections and nearly 900 migrant labor camp inspections.

So our two agencies carried out that activity last fiscal year. In addition to that, but the data here is from 1990, the state employment service agencies under the United States Employment Service independently carried out about 5,600 preoccupancy housing inspections of migrant labor camps, and these are inspections of compliance with Federal safety and health standards before those camps are occupied.

These statistics reflect the whole scope of the enforcement activity within the Department of Labor, but don't reflect really the emphasis we have given in recent years to improving the effectiveness of our enforcement activities as they relate to migrant and seasonal agricultural workers and in the agricultural sector in general.

Over the last 3 years, our Wage and Hour Division has carried out a special targeted program in agriculture, starting in 1990, focused in the East Coast migrant stream, and in years after that moving to the other migrant streams to concentrate our enforcement resources at the time and in the places where most migrants are employed. And we work very closely as well with state agencies and local organizations in putting together coordinated, targeted enforcement programs.

Just last week, for example, we undertook a major effort with the state of South Carolina, both law enforcement and labor standards organizations, in the Ridge area in South Carolina to carry out a comprehensive enforcement program targeted to particular challenges and some particularly bad or historically bad farm labor contractor activities in that area.

So that gives you a summary of the Federal programs designed to meet the needs of migrant and seasonal farmworkers, and some idea of the scope of Department of Labor activity in that regard.

I'll be happy to answer any questions you might have when the other panelists have finished. Thank you.

Ms. Hafner. Thank you very much, John. Obviously, there are extensive government laws and regulations governing this particular issue that we are looking at. Hopefully, one of our panelists will tell us whether, in fact, these laws are effective.

Next we will hear from Dr. Ed Kissam.

Dr. Kissam. Today I'd like to outline very briefly for you some of the demographic sociocultural and economic factors which enter into understanding and addressing the situation of migrant farmworkers in the United States.

I think the first critical recognition is to understand that U.S. labor intensive agriculture is not monolithic. It is tremendously diverse. It is a mosaic of tremendously different modes of production, different employment practices, different worker populations.

Each of these give rise to a different set of human dimensions in terms of how relationships between employers and their workers play out in different

parts of the country. Having said that the farm labor market is diverse, I would now like to go on into something that is somewhat contradictory with that, which is to try and make some generalizations about the U.S. farm labor market in general.

First of all, I'd like to address the issue of employment security which is, from the perspective of our research, the major problem faced by migrant and seasonal farmworkers.

Lack of employment security takes two forms, one of which is well known, that migrant and seasonal farmworkers are chronically seasonally unemployed for a number of months a year, resulting in low annual earnings.

One of the other problems which has been noticeable in our research is the fact that farmworkers are also seriously underemployed even during the best points for working during the year. We call this peak season underemployment.

Essentially this stems from the fact that, even if farmworkers can work 4 months a year at peak harvest, those peak harvests never go entirely smoothly, and workers then end up waiting for work, being able to work 2 or 3 hours a day for 5 days a week, being without work for 4 or 5 days due to climate conditions, market conditions, due to not being able to find another employer, having finished the work at one farm.

In the farm labor supply study we found that, even when all able bodied family members in a family worked, very few farmworker families are able to emerge from poverty. In 1989 a lone male migrant working on their own in central California, which is considered to be one of the better labor markets in the United States, earned on the average \$4,005.

In South Florida, again a labor market with a relatively good, solid labor demand during the winter season, average farmworker earnings for a lone male migrant were \$5,213.

South Texas workers in our study averaged only 6.6 months of farmwork during the year, and all were partially unemployed even during the periods when they were working most.

Even though families with multiple workers, say a husband, wife and one or two teenage children were working, amongst the South Texas workers we interviewed a typical migrant nuclear family with four persons in it had an annual income, and this includes both farmwork and non-farmwork earnings, of \$6,823. Clearly, those sorts of annual earnings put farmworkers deeply into poverty.

I would like to give you some examples of what exactly constitutes peak season underemployment, which is one of my primary concerns, just to give you a sense of this, and these come from our case records. We have adopted an ethnographic approach to looking at many of these conditions. So we have pretty detailed information on people's work histories and so on.

Using pseudonyms, here are some cases. One worker, I remember, who I interviewed in central Washington in the Yakima Valley asparagus harvest, Rufino Cendejas, was a middle-aged Oaxacan migrant.

His earnings during the course of the asparagus harvest were \$114 a week. This is a harvest that lasts for approximately 8 weeks. Thus, Rufino, in the major harvest activity of his migrant year, made approximately \$1,000.

In southwest Michigan a young brother and sister we interviewed, Pedro Duran and his sister, were pickle pickers. They were making \$246 a week between the two of them at the peak of the pickle harvest. The \$246 that we saw on their wage stub for the previous week was for picking 9,138 pounds of pickles and averaged about \$120-\$123 for each of them during the week.

Again, the pickle harvest, like the asparagus harvest, is a harvest that lasts 8 to 10 weeks, giving them earnings from their major crop of around \$1200 to \$1400.

In Michigan apples last year was admittedly a worse than average situation. Many growers have been hit with fireblight, and apple yields were low. The kind of situation we saw there was I interviewed a family of--well, a group of young men from Tamaulipas, from the northeastern area of Mexico.

They had arrived around 10 days before I interviewed them in Michigan, having come up the eastern migrant stream. They had waited 4 days for work, and they were working in apples. The day that I interviewed them, they had worked 4 hours in the apple orchard, which was all the work there was because of the bad harvest.

In the 4 hours that the crew of three young men worked, they made one bin of apples, which is approximately 1,200 pounds or so of apples, and they had received 10 dollars amongst the three of them for the one bin of apples. Their daily earnings were then \$3 each.

These are isolated examples from our case studies which are clearly isolated case studies. However, I believe the findings are representative. The National Agricultural Workers Survey which is, in fact, a national survey and which samples many more labor markets than we did in our case studies, finds that the average earnings for farmworkers in the United States was \$6,500 per year from farmwork earnings. The average number of days worked were 141 days.

In different labor markets, representatives will come up with different numbers of days worked, from 8 days to 160 days perhaps, but wherever we look at the different stories, they are similar, which is that farmworkers are disastrously underemployed.

A great deal of that unemployment, it must be understood also, is not protected by the unemployment insurance system, because the unemployment insurance system, for example, has a 1 week waiting period prior to being able to collect on a claim; and many workers, for a variety of reasons, low earnings or whatever, don't end up having valid claims.

So this is one major theme. I think that in the context of the Helsinki Commission's concern with human rights issues, and with the orderly flow of workers, one of the important issues which goes beyond the current legal framework is to consider whether, in fact, an employment payment system

which is based on piece rate contracts, which is simply that a worker will be promised a certain amount, say 17 cents a pound in asparagus, \$10 dollars a bin in apples or so on, constitutes in fact a valid employment contract. Essentially, what happens is that workers are drawn into a system which is similar to the system which evolved in 16th century Mexico where there were people called Enganchadores who were like hucksters who enticed workers into going to harvest assuming that there would be a tremendous amount of potential earnings.

In reality, most migrant workers assume that their work in the harvest will go well, and make their decisions based on the assumption that the particular crop they work in will yield adequately, that weather won't interfere, and so on.

I think that we need to consider--reconsider and look at protections for workers in terms of the worker's right to know what, in reality, the terms of employment they are going to be facing will be.

I would like to talk briefly about housing, which is, in my opinion, one of the other major issues. I think that in any area we were, crowded housing was ubiquitous.

It was amazing to us to see that around the country crowded housing arrangements result in almost equivalent rents wherever anyone is. Essentially, we talked to farmworkers in South Florida who pay \$25 a week for a few square feet on the floor of a crowded housing place, a crash pad.

We talked to workers in Central Washington and in Central California who paid exactly the same amount. Essentially, the charges for housing were what the traffic would bear. Given a farmworker's typical weekly earnings of \$150, \$25 a week was what the traffic would bear.

What I mean by crowded housing conditions is not perhaps what is generally thought to be crowded housing. What I mean is two families of 17 people share a two room shack in southwest Michigan. It's 19 lone male migrants from Mexico sharing a two bedroom house in Parlier, CA.

In the two bedroom house with 19 workers living in it, the workers in the back bedroom told us they didn't know the other 10 workers who were living in the living room, because they hadn't had a chance to meet them yet, because in it they were so separate.

Crowded housing in Immokalee, FL, means a couple with a young baby sharing a small trailer with seven teenage young Guatemalan migrants who live--who sleep on the floor, separated from the couple by a blanket.

In Immokalee crowded housing meant that workers who slept in the orange groves surrounding Immokalee could take a shower for a dollar at the general store. These are the sorts of conditions which we saw.

Even in Central Washington which is probably one of the best labor markets that I have seen we saw this sort of housing. The rent was lower. It was an average of \$18 a week per person sharing a house.

Given these sorts of conditions, it's clear that the United States farm labor force is not replenishing itself. Having looked in large measure with a

focus on what would happen after Immigration Reform and Control Act passed, clearly, one of our conclusions, along with other colleagues and researchers, is that the Immigration Reform and Control Act is not working.

I would go perhaps further to say that it has worsened things. Essentially, it is very difficult for us to tell with certitude, but it looks to us as though migration flows from Mexico to the United States are increasing.

All of the case study research by the Commission on Agricultural Workers appears to be quite similar in finding that in every labor market in the U.S. the complaint is too many workers, not enough work.

I would suggest that an important issue facing us legislatively is to look at immigration reform from new perspectives. Ironically, the efforts which were made in terms of attempting to control migration seem not to be functional, and in fact some of the provisions of Immigration Reform and Control Act which were designed to decrease migration have, I believe, inadvertently increased it.

Specifically the fact that the SAW worker, the Special Agricultural Worker legalization provisions legalized only people who were themselves farmworkers and did not provide the generous amnesty which pre-1982 families received in which wives and minor children were legalized, served, it appears, to increase the rate at which migrants engage in back and forth migration to Mexico. This, in fact, stimulates migration further.

In fact, one thing to be considered probably in future immigration policy is what would be the effect of attempting to truly welcome migrants rather than to have a covered guest worker program, to truly welcome migrants and incorporate them into U.S. communities, with some measure of support for adults learning English and learning the ropes of life in the United States.

I guess I'd like to close in saying that my assessment as a field researcher is that even tremendously increased investments in public sector enforcement activities, regulatory activities and service programs oriented toward serving farmworkers will not be effective unless there comes to be some new mode of collaboration between the public and the private sector in terms of coming to a solution which is not adversarial and which is not seesawing back and forth in search of relative advantage.

Essentially, U.S. agriculture is facing a period where it has already been for many years part of the global economy. I believe that with passage of the North American Free Trade Agreement there will be widespread public recognition that we are indeed in a global economy and, frankly, the United States cannot compete in a global agricultural economy on the basis of low wages and casualized employment arrangements.

Clearly, other underdeveloped countries and countries such as Mexico have the advantage over the United States in terms of low wages and casual employment. The United States currently competes in a few crops successfully only because it has a more productive agricultural labor force than other countries.

California manages, actually, to compete with Mexico in a certain limited number of crops. I think that the moral of that story is that the United States will need to move to have a quality labor force in agriculture in order to really be able to benefit both the health of the industries and the health of migrant and seasonal farmworkers.

In the few isolated instances where we were able to observe a genuine collaboration between the public and private sectors, for example, in housing initiatives and so on, the results were spectacular. However, those are extremely isolated cases of good news, and I have very little optimism that, without a real change of heart, anything much will happen.

I think there is, certainly--Certainly in Central Washington, an area which I looked at very carefully, there is ample experience, particularly in apple production, that apple producers can provide their workers with extremely long, extended seasons in which the harvest crews are downsized to a level where people can remain largely employed throughout 9 to 10 months a year. At that point, it's possible for farmworkers to emerge from poverty.

Anyway, that's it for us, and I'll be delighted to answer any questions later.

Ms. Hafner. Dr. Kissam, thank you very much. You have described a system of employment, as you say, that goes back to the 16th century. It appears that perhaps the circumstances that migrant workers find themselves in today perhaps have not changed that much either.

Our next speaker is Roger Rosenthal, who is the Executive Director of the Migrant Legal Action Program in Washington.

Mr. Rosenthal. Thanks, Mary Sue.

For the past twelve years, I have worked for migrant farmworkers as an attorney with the Migrant Legal Action Program or MLAP, a national legal services support center here in Washington, DC. For the past 7 years, I have been that organization's Executive Director.

I very much appreciate having the opportunity this afternoon to discuss the conditions faced by migrant farmworkers in this country and to give you a brief overview of Federal laws intended to protect them.

I'm a lawyer who has chosen to represent indigent farmworkers in their legal claims against both private employers and governmental agencies, claims to obtain decent wages and fair and humane working and living conditions. Through my work on behalf of these hardworking people, I have both seen and heard a lot that has shocked and dismayed me. I know that decent, fair minded people in our country are literally taken aback when they get a true picture of what it is to be a migrant farmworker.

The distinguished physician and child psychiatrist, Dr. Robert Coles, testified some years ago before a subcommittee of the U.S. Senate which was investigating the status of migrant and seasonal farmworkers. His testimony discusses the status of these workers and places the conditions which they face in a global context. He said, and I quote, "Migrant children and their parents

are kept from the rest of us and have no place, however dismal, to call their own. They are uprooted, such as even the extremely poor in other countries are not. The children go from school to school or, often enough, never go to school. Child labor is to be found, in spite of what the law says."

Dr. Coles continued, "No group of people I have worked with in the South, in Appalachia, and in our northern ghettos tries harder to work, indeed travels all over the country working, working from sunrise to sunset 7 days a week when the crops are there to be harvested."

He said, "I do not believe the human body and the human mind were made to sustain the stresses migrants must face, worse stresses, I must say, than I have seen anywhere in the world, and utterly unrecognized by most of us; nor do I believe that a rich and powerful nation like ours in the second half of the 20th century ought tolerate what was an outrage even centuries ago, child labor, forms of peonage, large scale migrancy that resembles the social and political statelessness that European and Asian refugees have known and, finally, be it emphasized, for people who seek work and do the hardest possible work, a kind of primitive living that has to be seen to be understood for what it does to men, women and, most especially, to children." End of quote.

In my work at MLAP, I have seen these conditions Dr. Coles describes, and I have seen them time and time again. I have seen the small, one room shack in Orange County, NY, just 1 hour from New York City, which stands unattached and unanchored on stone pilings and literally lifts off those pilings, tilting from one side to the other when the worker who lives there moves from one end of the room to the other.

I have heard the story of the Public Health nurse who worked with farmworkers in labor camps in North Carolina, a woman who thought she had lost her capacity for shock, having found terrible medical conditions among her patients, including live cases of tuberculosis.

This dedicated nurse would visit a particular labor camp in the evening after the farmworkers would come back from the field. One day she had to change her scheduled visit to a particular labor camp, and she arrived unannounced early in the morning before the hour the workers were to report to the fields.

She drove up to the camp, arriving just in time to see the camp crew leaders put the guard dogs away. She did not know her patients had been literally held captive at night in their labor camp.

I've heard the story of Hazel Filoxsian, a farmworker from Florida, who recently testified before the Senate Labor and Human Resources Committee. Ms. Filoxsian told of being raped as a child by a crew leader and how, years later, she and other women workers were used as sexual prizes given by a crew leader to the worker who had picked the most in a week.

In response to these stories, one might say there are Federal laws to protect these workers, but let us take a moment to look at some of these laws.

The Fair Labor Standards Act, which mandates a minimum wage and prohibits child labor, was originally passed by the Congress in 1938. Though at the time of passage the statute covered a vast number of workers, it did not protect farmworkers.

In fact, it took thirty more years for farmworkers to be covered by FLSA at all. Even so, two-thirds of all farmworkers are not covered, because of the threshold requirements for applicability of the statute.

It took 10 more years, until 1977, for farmworkers to obtain the same minimum wage as other workers; and in spite of the fact that farmworkers toil long hours in the fields, sometimes 12 hours or more a day, they are still not entitled to overtime.

This, of course, does not even touch on the degree of noncompliance with the minimum wage among agricultural employers who are covered by the statute, nor the sorry enforcement record of the statute by the U.S. Department of Labor.

Another Federal statute, the Migrant and Seasonal Agricultural Worker Protection Act or AWP, passed 9 years ago, includes very important protections for farmworkers. The statute, which was passed as a compromise among employers, workers, and the U.S. Department of Labor, protects workers from unscrupulous recruitment practices, as well as requiring transportation in safe vehicles, and sets minimum housing standards.

The statute was passed as a consequence of Congress's recognition that when workers are recruited in their home areas, sometimes as much as 1,500 miles away from where they are to work, they are often subjected to misrepresentations with respect to working arrangements or living conditions which they find at the end of the road.

When they arrive to work, they are often at the mercy of crew leaders and growers who recruited them to travel to their farms. While this statute is a very, very important protection for farmworkers, enforcement of the statute has been almost entirely on Migrant Legal Services Programs representing the workers. The U.S. Department of Labor's record of enforcement here, too, is simply terrible.

Ironically, in spite of the fact that a unanimous Supreme Court several years ago affirmed a worker's right to file suit under this statute for injuries sustained as a consequence of being transported in unsafe vehicles, vehicles which are in violation of requirements of the statute, growers, employers, are now trying to change the law to reverse that unanimous decision.

Another statute, the National Labor Relations Act which, according to the National Labor Relations Board, covers more than 40 million workers across this nation, does not apply to farmworkers. Therefore, the struggles of all worker groups to achieve contracts and recognition from employers are truly modern day versions of the tale of David and Goliath. The successes of these worker groups against the huge corporate interests in agriculture are successes against absolutely overwhelming odds.

There is also the story of field sanitation, the 15-year fight to obtain the right to a toilet, hand washing facilities, and potable drinking water in the fields. The OSHA act, in principle, protects farmworkers' rights along with nonagricultural employees.

Yet in the early 1970's, the U.S. Department of Labor failed to act on a petition by farmworkers to promulgate a field sanitation standard. That standard, which was finally issued in 1987, took 15 years to obtain, including a full trial and several appeals to the U.S. Court of Appeals which finally ordered the U.S. Department of Labor to issue the standard immediately.

Unfortunately, the standard, due to Congressional restrictions, does not cover 80 percent of all farmworkers. These workers remain unprotected, subjected to the daily indignities of squatting in the fields, dehydration, and exposure to toxic pesticides without the ability to wash them off. U.S. DOL enforcement of these standards, even for those covered, is spotty at best.

There are a range of other protections for farmworkers, such as OSHA and Wagner-Peyser housing standards and anti-peonage statutes which are all substantially weaker than they might be. Regardless of their substance, these statutes, especially those prohibiting peonage, are virtually unenforced by public authorities.

Then on the other hand, you have state coverage in areas such as Workers Compensation which varies considerably. In the Workers Compensation area, many States do not even cover farmworkers at all.

Mr. Fraser has described a variety of programs established to assist farmworkers. One that he left out is migrant legal services, which has been very critical to the enforcement of many of these statutes.

Unfortunately, many of these programs were targeted for massive cuts or extinction during the Reagan administration, and many of these programs are still significantly underfunded at a time when the need, the documented need, for these services is very, very great.

In sum, while some farmworkers are covered by several important protective statutes, many are left out of coverage altogether, and those who are covered generally do not benefit from government enforcement. That is why millions of farmworkers in this country do not earn a decent wage or benefit from fair and human living and working conditions.

Farmworkers must be brought out from the shadows into the light of day. This country must confront its obligations to correct the abysmal conditions these workers face and to help these people who are key to our economy and our wellbeing.

We must not turn our backs on those who are poisoned by pesticides, denied decent housing, and who suffer the indignity of terrible wages and working conditions. We must rededicate ourselves to sustaining these hardworking men, women, and children who sustain us through picking the food we serve on our tables every day.

Thank you.

Ms. Hafner. Thank you very much, Roger. Our final speaker will be Carlos Marentes, who is presently Director of the Border Agricultural Workers Union in El Paso, TX.

Mr. Marentes. Ladies and gentlemen, first I'd like to express my public gratitude to the Commission for giving me this opportunity to participate in this hearing.

I am the Director of the Border Agricultural Workers Union or we call it UTAF, which is based in El Paso, TX. This area has become the most important recruitment point for agricultural workers along the United States-Mexican border.

From this area, farmworkers from Mexico depart to the most important agricultural regions of the country. Other farmworkers, around 15,000, stay in that region to work basically in the chili fields of southern New Mexico.

Our organizing efforts go back to 1980 and, personally, I have been involved in the farm labor movement since the 1970's. This experience allowed me to affirm that the conditions for farmworkers in this country are a moral disgrace.

Historically, agricultural workers have suffered from low wages and dangerous and unhealthy working conditions. Many studies and hearings have been held to prove this situation.

In spite of these many hearings and studies, the changes that have been done in agriculture have been insignificant or useless. To the contrary, not only has there been no better changes in the agricultural fields of America, but the situation has become worse for farmworkers.

In California, which supposedly was the example for the rest of the country, now it is common to find farmworkers living and working under subhuman conditions. The same thing in Florida where you now find the same concentration camps of the 1960's and the 1970's, which remind us of the system of slavery in this country.

The migrant families from Texas still have to sleep in their cars parked alongside the fields in the state of Washington. This is the same thing all over the country, but particularly in the southwest and southern part of the United States.

Nevertheless, our firsthand experience is with the labor situation of the region of southern New Mexico and far west Texas and, like I said, particularly in the chili--the multi-million dollar chili industry of New Mexico.

This is one of the most productive industries along the border, but this is also one that has the most blatant violations of labor and human rights of agricultural workers. The chili industry generates an income of nearly \$300,000,000 for the State of New Mexico.

In order to give you an idea of the importance of this product, I need to mention that its value has increased constantly during the past decade from \$26,352,000 in 1980 to \$59,219,000 in 1991; and this is only the value of the chili crop. Once the chili is converted into picante sauce, the value increases.

Recently a study was published that indicated that picante sauce has displaced catsup as the main condiment in the food market, but this prosperity is based on the thousands of human beings that pick the product while receiving extremely low wages and working under unsafe and dangerous conditions.

In the chili fields of New Mexico, as in many places, they pay by piece rate for what each worker produces, and this type of pay has not changed for the past 10 years. Because of this, the annual salary of agricultural workers in our region was \$5,300 in 1991.

This is not even one-third of what an American worker that lives in poverty, according to the guidelines established by the Federal government, earns.

Besides low wages, they face many other problems. Due to low wages or the lack of housing for farmworkers, many of them are forced to take their children to the fields. In the fields, the children are forced to work as adults, without access to basic necessities such as fresh drinking water or portable toilets; and they are exposed to all types of risks and hazards.

In the first photograph--I think you have a copy of some of the photographs--you see Lorena Llamas-Guerrero, 3 years of age, who on June 5 of this year lost her life on the side of an onion field in Salem, NM.

National statistics prove that farm labor is one of the most dangerous of all--it's one of the most dangerous of all occupations. Nevertheless States such as new Mexico exclude agricultural workers from the Worker's Compensation system.

Farmworkers and their families are denied medical assistance and access to health programs. Because of this, it is not unusual that the incidence of tuberculosis and other illnesses are extremely high among the workers.

Apart from this, they are denied basic benefits such as unemployment compensation, and since the majority of farmworkers lack stable housing, they are rejected when they seek public or private assistance. If this were not enough, their human and civil rights are constantly violated by the various authorities that operate along the border region, and especially by the Border Patrol.

The reasons for this situation are many. One of them is the indifference on behalf of the government, and particularly of agencies such as the Department of Labor, to force employers to respect the laws and regulations that protect agricultural workers.

Other reason is the weakness of these laws and regulations to achieve an adequate protection of the agricultural workers.

Most of the problems farmworkers face are also the result of the use of farm labor contractors by growers and agribusiness. The labor contractors are the worst violators of such laws as the Migrant and Seasonal Workers Protection Act and the Fair Labor Standards Act.

Nonetheless, the most important aspect is the lack of collective bargaining rights for farmworkers. Without this right, you cannot establish an

organization that allows the workers themselves to better their wages and working and living conditions. All other workers in the United States have this right and, therefore, their wages and working conditions are different from the ones our workers have.

Without the right to collective bargaining, agricultural workers will continue living in poverty and will continue suffering the injustices they face now. Besides this, the right to organize is a universally recognized basic right by all countries that consider themselves to be a democracy.

There is no justification to continue to deny this right to those that feed this nation. The Congress has the moral obligation to support the fights of farmworkers for a better life, utilizing this right.

Once more I would like to thank you for this invitation to come before you, and I hope that the results of this hearing will benefit the agricultural workers that today suffer exploitation and poverty, because of the negligence of a greedy agricultural industry that continues to increase their profits at the expense of human suffering.

Thank you.

Ms. Hafner. Thank you very much, Mr. Marentes, and we very much appreciate your coming to Washington from Texas.

It seems to me that, obviously, based on what all of our panelists have said that we are faced with a situation that, in fact, has become worse. Before we go to the audience, what I would like to do is see if any of the panelists would like to respond to any of the remarks of the other panelists; and I won't pick on Mr. Fraser, but I'll give them all the opportunity to do so. Dr. Kissam.

Dr. Kissam. If I could respond to Mr. Fraser's remarks, I'd like to say I think Mr. Fraser has given a very good catalog of what Federal programs exist, and I think that, to frame that, a catalog is a correct description of it. It's a catalog of a series of goods which, in fact, can't be bought by those who are window shopping.

So simply to mention the two programs that I am directly familiar with, I did the national evaluation of the Vocational Rehabilitation Services for farmworkers for the Rehabilitation Service Administration in 1985, 1987. At that point that national program was funded at less than a million dollars.

As any of you who are used to running programs know, less than a million dollars is a drop in the bucket in terms of serving a national population. More recently, in 1990, I was part of a team which developed for the Office of Vocational and Adult Education some materials on adult education for migrant farmworkers, which is one of the programs that Mr. Fraser mentioned.

Therefore, I'm acutely sensitive to the fact that the title in the National Literacy Act which set aside funding for programs targeted to farmworkers never had money appropriated for that title--for that section of the law.

So all I can say is that, even in some of the areas where I've worked enthusiastically and energetically and where I hoped to see changes, lack of funding means that not much has happened.

Ms. Hafner. And do we have any questions? Yes, ma'am?

Ms. LeBrecht. I'd like to direct a question to each one of the panelists. Is it the laws that aren't working or aren't being enforced? Is it a lack of vigilance or is it that you need more laws?

Ms. Hafner. Dr. Kissam, would you like to start?

Dr. Kissam. Actually, my sense is that the problem is not that the laws are not being enforced. The system is fundamentally not working in many ways, and I don't see the lack of the enforcement of current laws as the problem. I see the fact that the laws don't address the core conditions which lead to farmworkers' problems being the difficulty.

Mr. Marentes. What I have to say is that, as long as the farmworkers don't get the right to form unions and to negotiate directly with the growers--I mean there is going to be no way to enforce laws or regulations, because they are the ones affected. They are the ones that's supposed to be doing it in an organizing way, protecting the rights and protecting their interest.

So I think the farmworker needs to have the right to organize, and an authority needs to establish to make sure that, when they are organized, that the employer, the grower, negotiates with that group; but they need to--The employment of laws and regulations has to come up by the affected. They are the ones that are going to be, you know, watching that their rights are protected.

Mr. Rosenthal. I believe that better laws would make a difference. So I think that strengthening existing laws and providing additional coverage such as the right to organize would be of enormous help. In addition, increased, effective enforcement of both existing and new provisions would make a big difference.

This is an imperfect world. The problems will not be solved completely, but I think that statutes can go a long way to making a difference in these people's lives; and enforcement of those statutes is necessary. Otherwise, they're not worth the paper that they're written on.

Mr. Fraser. I don't think I could agree more. As a law enforcement official, laws certainly can and need make a difference, and I think that Department of Labor is working very hard and continues to work hard to make sure that the laws we are responsible for are enforced; but I think I would agree with the doctor that the law, or the structure of law, is not the panacea to the kinds of problems you've heard about today and which we're all painfully aware of.

We work very hard to enforce those laws year after year, but there are, when you look at the agriculture workforce, a number of special circumstances that make it almost unique in this country.

There are other industries that are low skill, low wage industries, but few of them require the kind of mobility and have the short term employment prospects that are common in agricultural harvest work.

Now when you examine the characteristics of the work and the workforce, you find that there is relatively little requirement associated with entry into the workforce or incentive for stability in the workforce.

Because it is low wage, short term employment as long as workers can be found or present themselves, there is little structural incentive for the kind of stability in the workforce that leads to systemic changes in the nature of the relationships.

So the answer, I think, as succinctly as possible, is law is important, and the enforcement of law is important; but it is, in my mind, not the answer to the kinds of problems you've heard about today.

Ms. Hafner. I would ask our questioners if they would, please identify themselves.

Mr. Cavanaugh. My name is Dave Cavanaugh. I'm a policy research specialist for migrant farmworker issues at the National Association of Community Health Centers.

I'd like to ask a two-part question, if I may, to kind of piggyback on Mr. Fraser's remarks. The nature of the migrant workforce is indeed an unstable one, although a migrant family may derive the majority of its annual income from agricultural work.

There are risks posed by employment relationships with any one employer that makes it difficult to assure the full breadth of protections for any particular contract--for that piece of business, if you will. However, we do have a tier of the labor force here and an annual income and a value added to the agricultural economy that is vastly disproportional to that inadequacy of protection.

As an example, 2 days ago there was an article in the Washington Post about a \$50 million settlement in the State of Florida, which is approximately the annual funding of the Migrant Health Program, for workers who had received arbitrarily determined wages for some period of years. It comes to \$6,000 per worker.

I'd like to ask you and Mr. Rosenthal to respond to three questions. One: What are the chances of any worker ever seeing that money? In Bhopal, India, 12 years after a toxic accident, the case has finally gone to trial. Twelve years; 4,000 dead. What are the chances of those workers seeing any money? How is it to be distributed, and what protections are being put in place to stop arbitrary task rate payments from recurring? Thank you.

Mr. Fraser. Roger and I are going to join forces to try to answer all three parts of your question here.

My understanding is that this law suit is a private action, or at least one not brought by the Department of Labor, although I do believe that Rural Legal Service attorneys are involved in the suit.

My understanding is that the suit was decided in summary judgment by a state court and has been appealed to the State Court of Appeals. So to try to answer the first question, what are the chances of anyone seeing this money, I

think the Court of Appeals in the state, perhaps the State Supreme Court, will decide that.

How it's going to be distributed--It is, in that context, I think, much too early to say. Roger?

Mr. Rosenthal. Assuming that the judgment does get affirmed on appeal, there is generally a mechanism in these kinds of cases for distribution of back wages or other funds to indigent farmworkers who have been deprived of those wages otherwise.

It can, in some contexts, be very difficult to distribute those back wages, because growers, even though they are required to, often do not have adequate records of their employees. In those kinds of situations, a worker has to come forward and, in some other way, prove that he or she did work for that employer and is entitled to part of the judgment.

In terms of the last issue, dealing with the arbitrary task rate, we are involved at our organization, and there are other organizations as well, that have been actively pursuing litigation to try to eliminate the arbitrary task rate policy.

We have several cases right now on our docket in the West to deal with that. It's a complex issue, but it's one which we hope we can win in both the short and long run for farmworkers.

Mr. Fraser. If I may just add, on the question of back wage distribution, just as a general matter, we very often recover back wages that are owing to agricultural workers like workers in other sectors of the economy, and we will either require the employer to prove that those monies have been paid or we'll take responsibility for distribution of and accounting for those funds ourselves.

So where we have any substantial doubt that back wages that are owed as a result of an enforcement action are going to actually be paid, we'll collect that money ourselves and distribute it.

Mr. Cavanaugh. Could I just ask for a response to the third part as well?

Mr. Fraser. The question was for my response to the third part, which is what actions will be taken to assure that workers are protected from payment on a task rate basis.

As Roger said, we teamed up to answer that question, because in fact there is substantial litigation going on about that subject to which the Department is a party, in some cases. In that context, I think it best not to comment from the Department's perspective, because there is this pending litigation as to how to resolve the question of the legality of the task rate basis of payment.

Ms. Hafner. Thank you. We have another questioner.

Ms. Rottenberg. Yes. My name is Laurie Rottenberg, and I'm with the Association of Farmworker Opportunity Programs.

I was hoping to get some more information about the Coordinated Enforcement Committees, how often they meet, and at what level. You

mentioned advocacy organizations being invited, but we're typically not on any kind of list for that. So I wanted to hear a little bit more about these committees.

Mr. Fraser. OK. The Coordinated Enforcement Program is designed to make sure that Department of Labor agencies are talking to each other and working together in a common direction, as well as working closely with other organizations, state, local, private, nonprofit, community service organizations, so that we know where the problems are and how to direct our resources.

The National Committee meets here in Washington. It consists of the heads of the agencies that are involved, and there is a staff level working group associated with that committee that meets, I believe, twice monthly, but at least monthly.

The committee meets as warranted by whatever issues may be brought before it. In fact, we recently met with a delegation from the North Carolina Council of Churches with respect to particular enforcement challenges in North Carolina.

Each regional organization has a committee, and the Deputy Secretary of Labor has given instructions within the last few months to organize committees at the State level. They meet at least quarterly, have an open public meeting to which they invite representatives from all interested organizations to attend at least annually and more often than that, if there is interest in any issues that need to be addressed.

So the organizations will meet at least quarterly and have at least an annual public meeting, but do that much more often in some areas. As I said briefly in opening, the state committees are organizing, and they are at various places in different States for those same purposes.

Ms. Hafner. Thank you.

Mr. Harvey. My name is Pharis Harvey with the International Labor Rights Education and Research Fund. I would like to ask Mr. Marentes to follow up a little bit further.

You said the most important lack of rights is the lack of collective bargaining rights for farmworkers. I wonder if you would speak a little bit more about the major barriers you encounter to collective bargaining rights for farmworkers and what kind of legal reform or changes in enforcement at either the state or the Federal level would improve the opportunity for farmworkers to organize and bargain collectively?

Mr. Marentes. Yes, of course. Well, as you know, several States give farmworkers the right, California, Hawaii, and with different versions and so on in some other States; but in reality what we need is to have like every worker in the United States that is covered by the National Labor Relations Act.

I think that we need some kind of national labor relations act for agricultural workers with an authority. As you can imagine, the basic problem we face--For example, when we organized a labor stoppage in Hatch, New

Mexico, 120 miles north of El Paso, TX, it is the growers, the Sheriff who expel the workers from the place, because there is no law that says that if the majority wants to belong to a union or want to be represented by a union that the employer has to recognize that right; and that has to deal with that situation.

Most of the time, what happens is that fifty workers walk up from a field and declare a labor stoppage against the grower and demand a 10 cents increase, for example. What happens is that the next day they are replaced by new workers. They are fired.

If they keep the pressure, then they have to face the Sheriff Departments and all this law enforcement agencies that protect agribusiness and growers.

So we don't have a legal framework to do our organizing efforts, to do a struggle for better wages and better working conditions.

Now I think that it is not a good idea to have one state giving a worker a right and the other state, you know, excluding the worker from that right; because then what happens is that you have growers and companies from California moving to New Mexico, attempting to evade labor laws in that state. So I think a Federal law has to be--Farmworkers were excluded from the 1945 Labor Relations Act, and I think it's time that they need to be protected.

Ms. Hafner. You want to add anything to that, Mr. Fraser?

I would like to ask one question of all of our panelists. We live in a democracy, and we have a political process by which laws are made. What we've heard today is that--and if we assume for a moment that, in fact, laws are necessary, that they serve useful functions, given this democratic state, to what extent is democracy working for this particular community of migrant workers, and to what extent in that political process are we hearing the voices of migrant workers as opposed to, say, agricultural interests in making our laws?

Is there a breakdown in our democracy, to the extent that the laws are perhaps reflecting power as opposed to what is a very small and perhaps voiceless minority?

Dr. Kissam, would you like to--

Dr. Kissam. Well, I guess my first reaction is to say that the reality is that farmworkers' most precious commodity is their time, and they have no time for civic participation of any form; because so many hours of the day, week and year are devoted to survival.

The second observation, I guess, is that, by and large, the vast majority of field workers in the United States are born in rural Mexican communities, and have very little schooling and very little experience with the complex legal and regulatory environment of the United States.

Essentially, the sorts of issues which are posed in a democracy such as ours which baffle the general public and the experts at times and so on prove almost unmanageable for farmworkers in terms of looking at whether any

particular issue which is to be voted on, decided on and so on, how to fix their lives, I think.

I think farmworkers are able to have a sense of what's right, what's wrong, what's sensible and what's not sensible, but the extraordinarily byzantine structure of even the regulatory framework which does exist as to which agency has jurisdiction, what are triggering levels, and so on, is unmanageably complex.

So there is no real sense in which farmworkers, by and large, as a population can, except in extraordinary cases of people who are tremendously dedicated and who take the time and who are tremendously astute, participate meaningfully.

Mr. Marentes. Supposedly, in a real democracy people have the right to vote and to elect who represents the interest of that particular person. The United States farmworkers don't have the right to vote in the fields, to hold elections in the fields, and to decide whether they want to be represented by a union or not.

So I think, in that sense, we are failing giving one right of the democracy to farmworkers, but I guess in a general sense I think that farmworkers in this country deserve to be treated with respect.

When you force farmworkers to live under subhuman conditions-- There are some photographs in my presentation which will show you farmworkers living near the Rio Grande River or in the streets of Southside El Paso. There is a photo of three people eating in a car, this family living in a car outside the field.

So I guess we cannot, you know--We cannot continue talking about democracy or democratic country or democratic institutions unless we begin giving these farmworkers the right to a decent life, until we ensure that they are treated with respect not only by growers, but some of the time the abuses come from public institutions.

I know agencies in the area where I work where farmworkers are treated as criminals, where farmworkers are denied benefits without any explanation, without telling them their rights to appeal.

So I guess the attitude toward farmworkers by this society, by the government, has to change; and they deserve a better life. They are--Yes, they are a minority in this country, and the majority of them are Mexicans like me that came to this country looking for a better life, but I think that we are here, and we are doing a contribution to society. At least, we wanted to be respected by society and be treated as human beings, with dignity.

Ms. Hafner. Thank you.

Mr. Fraser. As I've tried to indicate in my remarks, I think that our democracy working to establish law has, in large part, recognized the special challenges and special circumstances of the farmworker community.

If the question is whether the politics in a democracy depend on power relationships and public perceptions, it would be impossible to argue with that question.

The law does recognize the special circumstance of farmworkers and, as I said in response to an earlier question, I think it's less in the law that the solution to some of these problems are found than in the basic economics and demographic structure of the agricultural economy.

It is a low skill series of jobs. It is a workforce that is increasingly foreign and unauthorized work in this country, and it is, as Carlos has indicated, very easily replaced. There is little stability or incentive for stability in the workforce.

I think it is in that set of structural circumstances that more light on the solution to these kinds of problems is to be found than in a construct of law that, while intended to recognize special needs and challenges, may not be supportable economically, especially in times of very difficult budget circumstances, and can't be successful in an environment where there is little incentive to meet extraordinary standards that would not be required in another area of the economy.

So my answer is I think democracy certainly works in recognizing the needs of this part of our population, but I'm not sure that's the answer or that the answer exists in laws enacted through the democratic process. Roger?

Mr. Rosenthal. The hearings where Dr. Cole spoke the words that I cited earlier were hearings called the Powerlessness Hearings, and they were a series of hearings about farmworkers.

Farmworkers are disenfranchised and virtually voiceless in this country, and certainly in the Congress. The Fair Labor Standards Act, when it was passed in 1938, did not cover farmworkers, as I indicated. There is a particular reason for that. That is that the agricultural interests, corporate agriculture essentially, had so much power that they were able to exclude their employees from the same protections that were accorded industrial employees.

That power structure continues today in slightly different form, but the balance is still tilted way against the farmworkers. If you look at PAC contributions and other ways of testing influence in this Congress, you see the enormous influence that corporate agriculture has on laws and on the democratic process.

There are very few people in the U.S. Congress who represent the interests of farmworkers, really just a handful, and often they are doing it out of purely altruistic purposes, because they are concerned about this group that does not have power itself, that doesn't have an ability to represent itself or protect itself.

As Carlos has said several times, farmworkers are not organized, essentially because they don't have rights to be organized. So it's very difficult. I've seen many instances around this country where farmworkers tried to group together to form some kind of cooperative effort, often not in a labor context, where without support, without continuing funding, that effort falls apart.

These people move. They're not always in the same place. They are incredibly poor, as you've heard as well from Dr. Kissam's presentation. They

don't have the ability to come together and become a political force, and that really lies in contrast to the power and money that the employers have in this country.

Ms. Hafner. Thank you.

Ms. Fisher. I'd like to ask one question, please, of Mr. Marentes. When an abuse occurs with a worker--say, a woman is raped or a person's wages are unfairly garnished--what recourse does the worker have or maybe I should rephrase that.

Does the worker know that he or she has any recourse, and how would they go about getting some justice for an abuse or are they so afraid or are they unknowledgeable that they don't come forward?

Mr. Marentes. Well, the experience that we have is that that person can do two or three things. One, he can contact--She can contact the Department of Labor, and probably nothing will happen.

Ms. Fisher. Why is that?

Mr. Marentes. In the region where we are, we only have one inspector to enforce laws and regulations in Southside, NM, and then the agricultural areas close to El Paso.

The only two times when the Department of Labor has sent inspectors to that area to really investigate was in 1989, and the reason was because we held a protest of farmworkers outside the Federal Building, and we demanded from our Federal representative to contact directly the Department of Labor here in DC and to send those investigators.

Usually, nothing happens. Then the other option, you can file a law suit against that grower or that labor contractor. The judicial in this country in regards to civil matters is really slow.

He was asking about the specific case in Florida. Well, I know a case in Presidio, Texas, which I was involved at the beginning; and a lot of the farmworkers involved have died and still we are waiting for a final decision in that case.

So sometimes it's hard to get justice through the legal system, even though we use both the Federal agencies and the legal system to fight for our rights.

The third option is to fight directly and to put pressure directly to the grower and to the labor contractor to respect the rights of workers. We have been trying to organize that area since 1980, and finally last year we signed a small contract with a grower.

It took us almost 22 labor stoppages that involved around 700 farmworkers, a month of striking almost every day, protesting every day. We even went to Mexico to do our protest before the American Consulate, everything, filing law suits, complaints, involving everybody, the church.

Finally, we signed this contract with one of the biggest growers, a contract that only covers from fifty to 100 farmworkers. So--but now under that contract the situation is different. Now--I mean, now they--For example, the grower or the labor contractor cannot fire the worker.

If you have a problem with our worker, you need to call and talk to the union, and then the union and--the representative of the union, the grower will decide a solution to the problem.

So I guess my answer is--I mean needs to be, the farmworkers, women, men, children, need to become organized and find a solution to the problems themselves with the support of, you know, agency laws or regulations; but I think there has to be a solution by the farmworkers themselves.

Mr. Fraser. If I may react to that first part of Carlos' answer, I think when he said that we have one investigator in the West Texas area, he is referring to one farm labor specialist. Agriculture is the only industry in which we have individuals identified as full time specialists to maintain knowledge and awareness of exactly what's going on.

We have about 25 such individuals identified around the country, but in fact those farm labor specialists exist to coordinate the enforcement efforts of all our investigations. We have offices both in El Paso and in Albuquerque.

Over the course of the last 4 years, we have had special enforcement efforts in the New Mexico chili harvest in each of those years. So when Carlos indicated that we had one person, in fact we have probably twenty-five investigators altogether in that area with responsibility for that activity, one of whom is responsible for focusing exclusively on agriculture.

I would also point out that more than 90 percent of our agricultural enforcement program is directed--We get very few complaints in agriculture. I think, Jane, you asked in your question whether agriculture workers are afraid or don't have the knowledge to know where to go to get redress.

As I said, very few complaints come from agriculture. All complaints we receive in agriculture would be investigated immediately because we know, if we don't, the workers won't be there. They will have moved on, generally, to some other employment; but more than 90 percent of our enforcement activity comes without a complaint. It's directed to find workers where they are when they are working in the harvest or in planting or whatever they may be doing, and to get our resources there when most needed.

I just wanted to clarify that based on Carlos' remarks.

Ms. Hafner. We have another questioner.

Mr. Green. Hello. I'm Andrew Green. I'm a correspondent for the Mexico City News.

My question to Mr. Marentes is, what do you think the effect of the North American Free Trade Agreement will be on the negotiating strength of Mexican workers? Will it have a deleterious effect on their strength? Thank you.

Mr. Marentes. Well, what can I say about free trade? We go from one problem to another. I guess the biggest concern we have is how free trade will affect farmworkers in this country and farmworkers in Mexico.

Several things--I can talk about several specific things. One, what changes will bring free trade in Mexico, especially in the communities where

most of the farmworkers of this country are coming from? In some of these places, begin selling their land in Mexico with recent reforms to the Mexican constitution--If some of those peasants begin selling their land, they will be relying more on working in the United States, not in staying in Mexico.

So we will have more workers competing with the farmworkers already here. Some of the operations of the agricultural companies will be supplemented, not moved but supplemented through production from Mexico.

I don't think agriculture in the United States is ready to move their whole operations to some other country. I think that they want to move some operations to supplement the production in order to ensure that somebody in New York has tomatoes on the market every day in the year.

So what happens is that we will have, you know, that competition. The situation with that right now is that, you know, there has been at least the establishment of some laws and regulations in this country that protect farmworkers, and now there is some talk and some States have already passed regulations regarding the use of pesticides.

You know, in Mexico some pesticides that are illegal here are legal there. I mean, they use DDT. So how the situation in Mexico is going to affect the situation of agriculture in the United States? I think that, if the wages and the working conditions, laws and regulations don't improve in Mexico, that situation will serve to pull down the wages and the working conditions of farmworkers in this country.

In fact, it will make things worse here, and we will have more workers and, you know, more coming from Mexico to compete for the few workers in agriculture. I think it would have a negative effect for farmworkers.

Ms. Fisher. Do the other panelists agree?

Mr. Rosenthal. Yes. It's hard to say for sure what all the effects are going to be of the Free Trade Agreement, but I think Carlos is exactly right, that it's inevitable that the situation here in the United States is going to deteriorate one way or the other.

There is currently, clearly, an oversupply of labor in this country and, if there are fewer jobs, what's going to happen to the people who are already having trouble getting any job, let alone a sustained period of employment?

Again, there are some differing analyses of the situation, but those of us who sit looking at the situation from the farmworkers' point of view see some grave threats to the future of agricultural employees in this country.

Dr. Kissam. If I could comment briefly, and I'm sorry to keep the gentleman waiting. My perspective is a little bit different in that it seems to me extremely important to distinguish between the short term and the long term impacts of NAFTA on the U.S. agricultural labor market.

I think, certainly, in the short term everyone sees that there is likely to be increased migration to the United States, increased chaos and some quite negative short term impacts; but on the other hand, it's also important to recognize that NAFTA phases in, particularly in agriculture, over a fairly long period of time.

I think the moral of the story for us is that we do have a few years. This is not a crisis. This is not a set of issues that should be addressed on a crisis basis, but from a thoughtful perspective in terms of looking at what movement toward free trade means in terms of economic cooperation, in terms of labor market issues, human rights issues, migration control, and so on.

So I think I'm fairly optimistic in the long run.

Mr. Linfield. John Linfield from the Housing Assistance Council. Maybe I can get a double dip and add to what you're saying.

To the extent that it increases the supply of laborers to the employer's advantage--it always has been--it will drive prices down. It will make working conditions even worse, if the Free Trade Agreement does, as most people expect that it will do.

I don't believe, after 25 years in the business, that it in fact is going to be short term in that respect. I fear it would continue for a long time. However, that isn't why I got up.

I would like to ask a question of Mr. Fraser. It's been an open secret that U.S. Sugar and other growers in Florida and Louisiana have dealt with their laborers in an unfair manner.

I was myself responsible for filing one complaint in the 1960's and problems have been going on since then. I wouldn't have brought it up except you keep talking about the enforcement efforts that the Department is making, and I have over the years seen very few of those efforts pay off in any reduction in the abuses which occur.

Now again I apologize. I don't mean to be attacking you personally, because as a one-time bureaucrat I had to deal with the Department of Labor; but I would be interested in your comments about the U.S. Sugar case, not the current 50 million one but what's happened over the years, and in Louisiana where nothing really has been done to ameliorate the atrocious conditions under which those cane cutters have to work.

Mr. Fraser. I'd be happy to, sir. Unfortunately, I don't think I'm going to be able to say much about Louisiana. I'm not personally familiar with that, but that's something we could certainly find out and follow up to answer that question.

In the Florida sugar cane industry, however, which is and has been for, I guess, nearly half a century now largely dependent on the use of foreign workers, in 1986 the Immigration Reform and Control Act changed the structure of the H-2A program so that in 1987 my organization became responsible for enforcing the labor standards provisions of that law.

At that time, 10,000 to 12,000 Caribbean workers were coming each year to hand harvest sugar cane. We talked earlier about a law suit. There has been litigation in this program going back probably for the half century that workers have been coming from the Caribbean to harvest sugar cane; but starting in 1987, as I said, we gained responsibility for labor standards enforcement that year.

We conducted investigations of half of the sugar cane companies. There are a very small number of companies. I think at that time there were eight altogether, but including U.S. Sugar and the three other largest sugar companies.

As a result of those investigations, we recovered more than half a million dollars in back wages for the Caribbean workers, as well as another \$600,000 in unpaid transportation reimbursement.

We have continued our enforcement program in the Florida sugar cane industry since that time, each year investigating about half of the employers, and we think we have made substantial changes in industry practices.

The suit that was asked about before would have a profound impact on the labor economics of the industry if it's in fact upheld on appeal.

So we have been very active in the Florida sugar cane industry, as well as in other areas where H-2A workers are employed. If you would like, if you want to leave a card or something, I can find out about Louisiana. I just don't know personally today.

Ms. Hafner. Do we have anymore questions? Yes, sir?

Mr. Simanis. My name is Simanis. I would like the panel to comment on whether they know anything about the Social Security coverage of migrant workers. I'm thinking, particularly, to disability benefits. Are migrant workers covered by Social Security? When they incur a disability, do a significant number of them get some sort of disability payments?

Also, presumably this general problem of migrant workers has come up in any number of international conferences in connection with the Helsinki process. Are the other countries coming up with special programs particularly aimed at Social Security coverage for these people, and are they coming up with programs that we might follow?

Mr. Fraser. Sir, I can answer the first part of your question, I think. Any agricultural employer who pays at least 20 days of hourly, weekly or monthly cash wages is required to withhold, report, and keep records on Social Security contributions, what are commonly known as the FICA taxes.

Workers are eligible for Social Security benefits under the same circumstances as any other worker. It, of course, depends on how much you earn and how long you've earned it, what your record of earnings is but they are eligible, as I understand it, just like any other worker for Social Security benefits.

The problem tends to be a failure to withhold or, where there is withholding, a failure to pay those taxes and credit workers' accounts. So that their eligibility is compromised by the failure to deposit the FICA taxes that have been withheld; but to my knowledge Roger may know more about this--eligibility is the same as for any other worker.

Mr. Rosenthal. Yes, John is right. In principle, agricultural workers are covered by Social Security benefits, but as he noted, the problem is getting the right number of quarters to be credited to a worker or the fact that money may

not have been paid into the system, in spite of the fact that it was deducted from workers' wages.

We have literally countless examples in our work of this happening. There are several different scenarios where this occurs, one of which is the attempt by agricultural employers to call their workers independent contractors as opposed to employees, which would mean that they don't have an obligation to pay in the employer's share of the Social Security and, in fact, the worker would have the obligation to pay that double sum of self-employment tax.

Very often, a worker will come home from a harvest season to South Texas, for example, and find a notice of employment tax deficiency with penalties waiting in their mailbox, when in fact the worker had assumed all along that he or she was an employee and that the employer had paid in for that protection which the worker is counting on. This is important because, obviously, farmworkers don't get any pensions. The meager amount of money that a farmworker could get from the Social Security System would be the only protection that they would have.

One other problem is that very often, when a family is working together, the entire family is placed on what's called the father's "ticket" or essentially all the earnings are placed on the male of the family's employment record.

That individual then has credit for the work of the entire family, including any of the children, a spouse, and so forth. Neither the children nor the spouse gets any credit for those hours worked, those days worked, those periods worked, even if they had worked 15 or 20 years. Very often women find that their spouse passes away and they are not covered by Social Security because they were never given credit for the very hard, back breaking work that they did, day in and day out. It all went on the husband's account.

There are lots of major, major problems in getting coverage for farmworkers in that kind of situation. The bureaucracy has, on occasion, been resistant to farmworkers trying to correct their wage records.

There have been several cases recently where legal services have represented farmworkers who can prove that they worked a certain number of periods in order to gain that coverage, the minimum required, and they've had to go up on appeal at several levels in order to get an adjudication that in fact these people--generally farmworker women, are actually covered by the protection.

Mr. Fraser. I think, if I may, there is one other aspect of your question that we ought to address, although I don't know enough to answer it. I can only raise the question.

That is, with an increasingly large proportion of the workforce being either recently legalized or not authorized to work in the United States, it may well be that there is some provision in the immigration law that affected eligibility for some of these Social Security benefits for the newly legalized,

and it's very doubtful that unauthorized workers are going to be in any situation to claim entitlement to some benefits, even if they accrued sufficient credits.

So the legally authorized worker status is also a factor that may play. You may know some more about that, Roger, than I; I just don't know how that may affect entitlement.

Dr. Kissam. Just to comment on the issue of disability in general is that farmworkers continue to have very serious problems in terms of collecting disability insurance and in terms of vocational rehabilitation, because so many of the problems that they experience are chronic and difficult to link to a particular traumatic injury.

So the problem of back problems, arthritis and so on continues to be, I believe, a very serious one, particularly as the farm labor force ages, particularly U.S. workers who first came to the United States, so called Green Card workers who came to the United States in the 1960's and 1970's, have stayed in farm work and are still working in farm work.

Those workers are largely older, and they will end up having--They have little recourse except to continue working.

Mr. Marentes. Just mention something about that. For several years, some nations have been trying to pass an international convention for the protection of the rights of migrant workers and their families. I think that initiative has been before the Socioeconomic Council of the United Nations.

The main opposition to that convention has come from the United States. Basically, the United States argues that here migrant workers have all their rights, have everything, that they don't need nothing more; but I guess there is going to be some advances now that there are some changes taking place in Europe, and now that the problem of refugees and migrant workers have become something like a big problem for several countries.

I think that sooner or later, 1 day we will see an international declaration of human rights for migrant workers. I hope that that day when we'll see that declaration, we will have the power to put enough pressure to the United States to sign that declaration; because, as you know, there are several international instruments that protect the rights of workers, but United States has refused to sign those declarations.

Ms. Cosman. I'm Cathy Cosman, Free Trade Unions. I would like to ask a question about pesticides. Dr. Kissam and Mr. Marentes both referred to the problem in general. I was wondering whether they could be more specific. Also, I would like to hear about international standards on the health effects and use of certain pesticides, whether such exist and, if so, if they are being observed.

Dr. Kissam. If I could comment on just--I haven't dealt directly with pesticide issues for the last 15 years, but let me say that one of the concerns which was of major prominence in my mind in those--and other people in California in the 1970's--had to do with the effects of chronic exposure to pesticides.

It's an area in which, to the best of my knowledge, the research continues to be tremendously inconclusive. There's inadequate research, and still very serious reason for concern as to what those effects may be; because the EPA's enforcement has focused on acute toxicity rather than long term effect.

So its an area where, I think, we really need to look at in the future.

Mr. Marentes. Well, I don't know. Maybe Roger can talk more about it, but the problem with pesticides is that the Federal Government has failed to regulate the use of pesticides. For example, in New Mexico we don't have state regulations. In Texas, we have what is called a right to know law, under which the employers have the obligation to advise the workers that a certain pesticide was used in the field, that there's a 24-hour entry security something, but I guess that the failure of the Federal Government to pass Federal regulations in regards to pesticides has been a major problem for farmworkers.

If we don't have, you know, those types of regulations, how can we expect Mexico to have regulations in regard to pesticides and health and safety in the fields? About 3 or 4 months ago, I discovered what is called Diario Oficial de la Federacion, which is something like the Federal Registry in Mexico.

I was amazed to find the name of DDT as one of the legal chemicals for use in Mexico in pesticides.

Ms. Hafner. Do you have anything to add, Roger?

Mr. Rosenthal. Just a little bit of detail, I guess, about the lack of initiative on the part of Federal agencies. I believe the Commission may be considering some additional hearings where you're going to be talking about health issues, and I'm sure pesticides will be one of the things that you talk about, if you do do that.

One example of the lack of protections here is the extraordinary delay in the worker protection regulations which are being considered now and have been considered for a lengthy period of time. The appropriate agencies just keep on sitting on the regulations and sitting on the regulations and sitting on the regulations.

There seems to be a lack of will in terms of enforcement as well as simply promulgating regulations pursuant to statutes which have been around a long time. We do have a problem in this country as well with the export of chemicals which are not permitted to be used in this country anymore but which other countries allow to be used. You see this so called circle of poison being spread throughout the world, and it may come back to haunt us as a consequence of free trade.

Ms. Hafner. John, do you want to add anything?

Mr. Cavanaugh. In the health arena, I've had conversations with the National Institutes of Health about the kind of panel that would be necessary to assemble and collect data to definitively determine whether a population was experiencing cancer rates due to a particular exposure or not.

Essentially, they are saying we need to track 100 farmworkers for 10 years. That's the way it's normally done. There has been limited experience

We will be looking at housing conditions, access to health care, and also, I think, probably the right to bargain collectively and the safety nets that are in place today.

I want to thank our panel who were very, very gracious with their time, Mr. Fraser, Dr. Kissam, Mr. Rosenthal, and, certainly, Carlos Marentes. Thank you very much.

[Whereupon, at 3:26 p.m., the Commission adjourned.]

HEALTH AND SAFETY OF MIGRANT FARM WORKERS

Friday, October 9, 1992.

Washington, DC

The hearing was held in room 2128, Rayburn House Office Building, Washington, DC, at 10 a.m., Jane Fisher, Deputy Staff Director, presiding.

Present: Jane S. Fisher, Deputy Staff Director

Ms. Fisher. I would like to welcome everybody here this morning to the second in our series of our examination of the migrant worker issue in this country.

I am Jane Fisher, Deputy Staff Director of the Helsinki Commission. The Commission generally focuses on human rights problems in Eastern Europe, Central Europe and the former Soviet Union, however, it is the Commission's belief that an examination of possible human rights abuses in our own country is not only our obligation under our mandate in the Helsinki process, but it also gives us more credibility when we are discussing human rights concerns with other countries.

Last summer at the Helsinki summit, leaders of 51 CSCE nations reaffirmed their commitment to promoting tolerance, understanding, equality of opportunity and respect for the fundamental rights of migrant workers.

This is a little known fact about the CSCE process, that it specifically addresses the rights of migrant workers.

Over 17 years mutual CSCE commitments have grown to encompass not only conditions of employment for migrant workers, but also health, housing, vocational training, education, special needs of children and equality of opportunity.

Our primary purpose today is to promote public awareness of the migrant worker health problems in this country. Since the Commission began its examination earlier this year, a myriad of health and safety concerns have become evident. Farm work is the most hazardous work in this country. Unsafe transportation, pesticides exposure, and other routine dangers commonly account for hundreds of deaths and injuries each year, and rates of infectious diseases and other serious maladies are much higher among this vulnerable population.

Yet the transient nature of migrant workers, cultural and economic barriers, and rigorous schedules make health care delivery problematic.

Workers are often reluctant to seek medical assistance for fear of losing their increasingly precarious jobs.

And while the Nation as a whole faces an affordable health care crisis, safety net programs designed to help the neediest are most often unused or unavailable to migrant farm workers.

A particular area of concern to the Commission pertains to the use and regulation of pesticides. When staff members traveled to agricultural intensive areas around the country, numerous examples of pesticide exposure were in evidence. Regulations concerning labeling and application of pesticides, as well as field reentry intervals seem to be routinely ignored.

The health implications raised in this area are enormous and sometimes deadly. It is imperative for the sake of growers, farm workers and consumers that high standards regarding use and application of pesticides be maintained.

The Commission will compile and publish the proceedings of its briefings along with statements submitted by interested groups and individuals, and subsequent briefings will address family issues, as well as possible solutions to problems encountered.

And I would just add that we feel very strongly that this is a problem that has gone on too long in this country. Migrant farm workers do not have a constituency. They do not have a strong voice, and yet it is a group of people in this country whose human rights are being very badly abused. We are not here to point fingers just at farmers or just at government.

It is the responsibility of all of us because it is a problem that has become acute, and it diminishes us as a country. It diminishes what we stand for in America.

So let's hear now from those who have dedicated their careers to work in this field. We have with us Dr. Marilyn Gaston. She is Assistant Surgeon General and Director of the Bureau of Primary Health Care of the Department of Health and Human Services, which is responsible for improving access to quality, preventative and primary care to underserved minority, poor and disadvantaged populations.

Programs under Dr. Gaston's direction include community and migrant health centers. I will introduce all of you, and then each of our panel members will make their presentation, and then we will take questions from the floor.

David Duran is chairperson of the National Advisory Council on Migrant Health, which makes yearly recommendations to the Secretary of the U.S. Department of Health and Human Services.

He is currently the Hispanic and Migrant Services Coordinator in the Wisconsin Department of Health and Social Services. A former migrant and seasonal farm worker, since 1974 he has worked to provide various services to migrant farm workers.

Dr. Ed Zuroweste is chairperson of the Migrant Clinicians Network and Medical Director of the Keystone Migrant Health Clinic in Chambersburg, Pennsylvania. He serves on numerous national and regional committees

associated with family, community and rural health care, and has been appointed to the Executive Coordinating Committee of the National Coalition for the Elimination of Tuberculosis.

Valerie Wilk is a health specialist with the Farmworker Justice Fund, a national, not-for-profit advocacy organization in Washington, D.C. She also directs the fund's farm worker women's health project.

Prior to her current position, Ms. Wilk directed a pesticide education program at a community and migrant health center in New Jersey.

Louis Tr  , Jr. is senior advisor to the Director of Environmental Protection Agency's Office of Pesticide Programs.

So let's start now with Dr. Marilyn Gaston. Doctor.

Dr. Gaston. Thank you very much. Good morning.

I am Dr. Marilyn Gaston, Director of the Bureau of Primary Health Care, and it is, indeed, a privilege to speak before you today, and I applaud the efforts of the Helsinki Commission on behalf of migrant and seasonal farm workers.

My professional career has been dedicated to improving the health of children and their families, especially poor and minority families. I assisted in the establishment of a community health center in Cincinnati, and served as its first medical director, meeting the needs of low income African-Americans.

I am now the Director of the Bureau of Primary Health care. As you heard, we are currently providing high quality, comprehensive, primary preventive health care for over 6,000,000 underserved poor, minority, disadvantaged people all across this Nation.

Since coming to the Bureau, I have actively supported a renewed focus on the health needs of the migrant and seasonal farm worker through our migrant health program. In spite of my previous experience, I must confess to you that I am still learning about the significant challenges we face in delivery of services to a mobile, multi-cultural population, with significant health problems.

I, like many in the country, first learned of this group of people on a Thanksgiving evening in 1960, when Edward R. Murrow presented the documentary "Harvest of Shame," exposing the bitter experience of the migrant condition.

Over the years, we have learned that this is not a stable population bounded in a specific geographic service area, but a population that is constantly on the move, and needless to say, this presents enormous challenges for health services delivery.

You can imagine the difficulties it presents in providing the continuity of care provided for adequate immunizations of children or oversight of chronic health problems, for example, diabetes.

A population on the move presents challenges for data collection, and although reliable data are limited, what we do know about the overall health status of these poor, hard working people is very disturbing.

In an attempt to provide a more complete picture, the Bureau was pleased to support a comprehensive study conducted last year of four migrant health centers in three States.

The study points out that the disease patterns of this population are similar to those found in the general population of the United States well over 60 years ago.

Migrant farm workers and their families are more likely to experience significant maternal and newborn health problems. They have high rates of parasitic and infectious diseases, including food and waterborne diseases, skin diseases, also chronic diseases, for example, hypertension, and the rate of diabetes is 300 percent higher than that of the general population.

A recent report of the Centers for Disease Control indicates the distressing fact that farm workers are approximately six times more likely to develop tuberculosis than the general population because of their substandard and overcrowded living conditions.

We are developing a strategy that recognizes this reemergence of tuberculosis as a major public health issue, and especially as it relates to the farm worker population.

The Bureau has a strategic plan to try to meet the health needs of migrant and seasonal farm workers. The key areas of this strategic plan are access, clinical and integration/collaboration. Our highest priority, both now and in the future, is increasing access to high quality, family oriented, culturally sensitive, community based primary health care for our migrant and seasonal farm worker population and their families.

The Migrant Health Act authorized the provision of primary and supplemental health services to farm workers. We have grown from an initial appropriation of \$750,000 to an appropriation of \$57.3 million.

Today, the 104 organizations we support operate health centers in over 400 locations, and we serve the needs of over 500,000 people annually. We attempt to fill a gap and create a network of health centers up and down the migrant streams where none had existed before, and we are all very proud that 1992 marks 30 years of health service to migrant farm workers through our migrant health program.

The migrant health program serves the most vulnerable among us through a community based system of care. The average farm worker earns less than \$7,500 per year, and fewer than 18 percent are recipients of needs based social services, such as food stamps and aid to dependent children.

Their exposure to environmental and occupational hazards and substandard living conditions challenges the very fabric of our delivery system, a delivery system which must continue to face the serious challenges of recruiting and maintaining qualified health care providers, while also trying to keep up with the spiraling cost of care.

The migrant health program appropriation for fiscal year 1992 was \$57.3 million. This permitted a \$5 million increase to expand services directly to our migrant and seasonal farm workers.

Another key component of our access plan has been the revitalization of the National Health Service Corps to address major recruiting problems I alluded to before. The National Health Service Corps continues to place providers in settings which serve those most in need, and certain major placements go to programs serving migrant farm workers and their families.

We are also increasing our efforts to target and recruit multi-ethnic, multi-racial providers, and in addition, we are expanding our efforts to train students in migrant health centers so that we can try to expand the pool of culturally sensitive providers that are knowledgeable about farm worker health problems.

Another key component though of expanding access is to expand and facilitate financing coverage, especially under the Medicaid program. As was pointed out in the recent General Accounting Office report, farm workers who qualify for Medicaid face enormous barriers in enrollment procedures and administrative requirements.

Trying to get through the various enrollment and eligibility requirements as they move from state to state, as well as problems associated with the lack of transportation, inconvenient hours of operation and language difficulties, represent insurmountable barriers to most migrants.

We are currently working closely with Health Care Financing Administration to address these issues, and we are also planning to conduct a feasibility study of multi-state Medicaid reciprocity programs for migrant farm workers and their families.

Hopefully, the results of that study will form the basis for implementing a HCFA reciprocity program in several states.

The second area after access for our emphasis is clinical. The foundation of our clinical efforts are the Migrant and Season Farmworker Health Objectives for the Year 2000, a copy of which has been provided to the Commission.

Clearly, a multi-disciplinary effort is needed to improve the overall health status of farm workers in this country. The 15 health objectives reflect the agreed upon current priorities for migrant health service needs, covering such things as goals to reduce environmental health hazards, HIV infection and other infections.

We are also very proud of the efforts of the Migrant Clinician Network, which we have helped to support since 1984. This group is very important in providing guidance for the clinical issues as it relates to our programs and in sensitizing providers to the unique issues of the delivery of services to migrant farm workers.

And, I might share with you that as I travel around the country and visit our programs, I have found some of the most caring, most sensitive, and most committed providers that I have ever experienced in my career.

And, finally, integration and collaboration. Providing health care for America's harvesters requires major cooperation at every level, local, state and

federal, and therefore, services integration and collaboration has always been a key goal of the migrant health program.

Since 1985, the migrant health program has been an active member of the federal interagency committee made up of the key federal departments serving migrants, as well as interested private advocacy groups like the Farmworkers Justice Fund.

We are very enthusiastic about our ongoing collaborative efforts that I have mentioned with HCFA on the problems of Medicaid coverage, and we are also working with the Department of Housing and Urban Development on the alarming housing conditions which most migrants experience.

In addition, our relationship with CDC is ever increasing. We have a joint evaluation project to provide technical assistance to our health centers on improving pre-school immunization rates, and we are working with CDC to target additional dollars for childhood vaccines and have an ongoing collaboration which is increasing on Hepatitis B, certainly on tuberculosis, and sexually transmitted disease initiatives.

We also work very closely with our sister bureaus within the agency, in particular, the Bureau of Maternal and Child Health on special material and child health activities and the Bureau of Health Professions to expand support of nurses in migrant health centers.

In closing, let me say the need is very great and much needs to be done. We will continue to build upon our long-range plan to, number one, improve access to care; number two, improve the quality of that care; number three, recruit and retain multi-ethnic, multi-racial health care providers; and, number four, improve integration linkages and collaboration at the local, state and federal level and promote public and private partnerships wherever possible.

Our job is enormous and growing, and the fact that states are suffering financially increases the burden on our programs even more. However, there's increasing recognition that our kind of health care, community based, comprehensive, culturally and linguistically sensitive, family oriented, primary health care, is the answer to improving access to quality and cost effective care.

It has been said that the farmworkers' struggle is still going on with the dignity, not to mention the lives, of so many people at stake. It has been waged by others in earlier years, even as it will be waged in the years to come.

I think all of us want to have a positive vision of the future for our farmworkers, founded on the belief that the gap between the promise of a better life and their current reality can one day be closed.

Thank you very much.

Ms. Fisher. Thank you, Dr. Gaston. That was very informative.

Now we have Louis True, Jr.

Mr. True. Thank you.

I am representing the U.S. Environmental Protection Agency.

The Environmental Protection Agency has recognized for some time that both migrant and other agricultural workers are inadequately and have

been inadequately protected from agricultural pesticides and their residues. Therefore, we are pleased to say that after considerable effort, the agency did in August of this year issue final regulations which we believe are a major improvement and strengthening of the existing regulations to protect both farmworkers and the handlers of pesticides on agricultural establishments.

They are called the Worker Protection Standard for agricultural pesticides. These regulations will come into effect gradually over the next three years, and they will affect approximately 560,000 farms, forests, nurseries and greenhouses in the United States.

We expect roughly 3.9 million agricultural workers and pesticide handlers to be directly affected by these regulations.

The regulations substantially increase protections to these workers basically through three categories of provisions. Those are: first, the elimination or reduction of exposures to pesticides wherever possible; second, the mitigation of those exposures when, as is inevitable in the work place, they do occur; and, finally, through education and through the provision of information that allows workers to better protect themselves.

In the area of eliminating or reducing pesticide exposures, the regulations principally accomplish this through two measures. The first is a set of provisions dealing with what are called restricted entry intervals. These are periods of time after the application of a pesticide to a crop which must expire before workers may enter the area to perform hand labor.

The regulations do provide some exceptions to this prohibition, but those exceptions are under strictly controlled circumstances and with protections such as personal protective equipment and special training and decontamination provisions.

The second major category of measures to prevent exposure is the use of personal protective equipment, not just for workers who enter treated areas to perform hand labor, but also for the handlers of pesticides who may be exposed to the concentrate or directly exposed to pesticide spray.

The second major category of provisions that I mentioned was mitigation of exposures which will occur, and this is principally through two measures. Decontamination facilities must be made routinely available to such workers. This is the provision of water, soap and disposable towels in the field and/or at pesticide application sites. The second provision is called emergency assistance, under which agricultural employers will be obligated to provide both transportation to the nearest source of emergency medical care in the event of a pesticide poisoning. Employers must also supply necessary information to assist that medical care by providing the circumstances of possible exposure, the possible pesticides to which the worker may have been exposed, and other information that may be available to them, such as information for physicians which is present on pesticide labels.

Finally, there is a category of assistance which in a sense empowers workers to protect themselves by providing them with information about the

hazards of pesticides and about steps that they can take to improve their safety in the work place.

Workers in agriculture who are exposed to pesticides will be required to be trained. There will be a requirement for a display of a safety poster which reinforces and repeats this training. There is also a fairly involved set of requirements for notification and warning of workers, both of impending applications and the location of such applications. It also includes notification of treated areas that are under restricted entry intervals--areas on the agricultural establishment which workers should not enter until the restricted entry interval has expired.

There is also a central listing of information available to all workers on the exact nature of the pesticide and date and place of application.

We expect that these new and significantly strengthened regulations will substantially reduce the numbers, which are difficult to define but which we know to be quite large, of health effects from both direct exposure to pesticides in the agricultural work place, and to residues of those pesticides in treated areas.

So, in general, we believe that workers and pesticide handlers will be or should be far more confident that they are safer from pesticides in the agricultural work place than they have been in the past as we implement these regulations over the next few years.

Thank you.

Ms. Fisher. Thank you.

Now we will hear from David Duran. Mr. Duran.

Mr. Duran. Thank you, and good morning to all, and members of this Commission.

I am David Duran from Beaver Dam, WI, and I come to you today as a former migrant farmworker who was born and raised in Eagle Pass, Texas, a southwest community along the Rio Grande, which is predominantly where a lot of migrant, seasonal farmworkers reside.

I am also here today as the current Chairman of the National Advisory Council on Migrant Health. The National Advisory Council on Migrant Health is a congressionally mandated advisory council which advises the Secretary of Health and Human Services regarding farmworker health needs and services. Comprised largely of current and former farmworkers, this 15-member council annually develops recommendations regarding migrant farmworker health and submits this recommendation to the Secretary.

The farmworker membership of the council and the council's advisory mandate make the council's role and perspective unique among farmworker health advocates.

It is important to know that in developing its annual recommendations, the council gathers information not only from migrant health centers, but from farmworkers, as well. In the last 13 months, we have held public hearings in Denver and San Diego in order to listen to farmworkers speak about their health needs and health service concerns.

The story is told. The conditions described are little different than those heard in 1952, when Senator Hubert Humphrey held 11 days of hearings around the country on migrant conditions. They are little different from 1961 and 1962 when the House and Senate held hearings considering authorization of what would soon become the migrant health program.

In its 1992 recommendations, the National Advisory Council on Migrant Health focused on eight areas of concern: housing, outreach, mental health, appropriations, Medicaid, and health professions, family issues, and research.

Each of you have a copy of these recommendations, complete with background paper on each area. So let me just highlight one area, due to the time constraints here.

It is the experience of health workers and advocates which provides much of the available demographic and health status information about migrant farmworkers. Very little research has been done on this population.

Even simple demographic data, such as size, race, ethnic composition, and the distribution of the migrant population, are very rough estimates. Reliable health status data are much more elusive.

Needless to say, this void of information impedes the effective planning and implementation of appropriate health care services. The council has recommended that at least one percent of the Public Health Service Section 329 evaluation funds be dedicated to migrant specific research efforts, and that every effort be made to secure resources from federal health research agencies, agencies such as the Agency for Health Care Policy and Research, the National Institute of Health, and the Center for Disease Control.

Migrant farmworkers in this country continue to live and work in conditions generally thought to be characteristic of developing countries. Dilapidated, scarce and expensive housing has left the crowded and unsanitary conditions which have contributed to an infectious disease pattern unparalleled in other occupational groups in the U.S.

Long hours and physical labor in chemically and mechanically hazardous environments contribute to high rates of injury and chronic disease.

Nearly all migrant farmworkers live in poverty. Although these people make it possible for us to buy inexpensively most any fruit or vegetable we can want year round, most migrant farmworkers do not have enough money to buy the same fruits, and many are hungry and malnourished.

Virtually every injury or inquiry, I should say, into the health conditions of migrant workers cite the same litany of multiple and serious health problems. While the U.S. Public Health Service migrant health program has done an admirable job of providing health care services to migrant farmworkers since 1962, its funding is limited and, thus, is its capacity to meet the tremendous need.

It is generally believed that the migrant health program serves only about 12 to 15 percent of the national migrant and seasonal farmworker

population. There is no general legal right to health care in the United States for the population. As such, there is no legal right to health care for migrant farmworkers.

Nevertheless, language from the CSCE documents concerning migrant workers assert the migrant workers should have opportunities and services available to them as they are available to other workers.

Unfortunately, this is not the case with respect to agricultural workers in the United States. Historically there has been a pervasive image of farmwork as different than other sorts of work. The classic manifestation of this is the fact that agricultural workers are exempt from a host of federal protective health and safety regulations which cover other workers.

On behalf of the council, I wish to extend an invitation to the Commission to attend our council's next public hearing to hear from farmworkers themselves about their conditions. This will take place on October 23 in Portland, OR.

Finally, I wish to share with you testimony given 30 years ago to a House committee hearing on health clinics for migratory farmworkers, and I quote.

"It is time we end this particular American tragedy. 'The Grapes of Wrath' should be a period piece, not a comment on the current American scene."

I want to thank this Commission for allowing me to provide this testimony, and I am truly honored to be here with you today.

Thank you.

Ms. Fisher. Thank you, Mr. Duran.

And now we would like to hear from Dr. Zuroweste.

Dr. Zuroweste. Thank you.

Good morning. I am Dr. Ed Zuroweste. I am a family physician from Chambersburg, PA. As the chair of the Migrant Clinicians Network, I represent the doctors, nurses, dentists and other front line providers caring for migrant and season farmworkers and their families in remote, rural areas.

A picture is worth 1,000 words. So I am going to show 30,000 words as I give my few remarks. These are pictures of migrant farmworkers.

I want to offer you this morning a glimpse of what it is like to be a migrant clinician who cares for those who work to put food on all of our tables. Farmworkers are wonderful people. They are smart. They are hard working, and they are survivors.

They are accustomed to doing without or receiving very little. Sadly, they have to be because we can do so little for them with what we have.

Our health centers function in isolation, not only isolated from one another, but from the larger mainstream health care communities. We do not choose this isolation, but in reality, we function as islands of care for an often misunderstood and undervalued population in communities where the local residents do not have adequate access to health care.

In addition, farmworkers are barred from traditional health care services by differences in their language, cultural differences, lack of local transportation, poverty, poor access to referral sources, and the absence of continuity of medical care and follow-up.

Migrant health centers are tasked with creating a viable, culturally relevant system of care, and they do a tremendous job with what they have, but what can you do with \$100 per person per year? Because in reality that is what we have. That is the average spent on each farmworker in a migrant health center in a year, \$100 for their health care.

And at current funding, we are able only to care for less than 20 percent of the farmworkers of this country.

The needs of these people is great, and they are ignored by much of America.

This slide is of the recent devastation of Hurricane Andrew in Homestead, Florida. Many of you saw some of the tent cities that were set up, and many of the migrant farmworkers had to live in these tents.

Well, this tent is an example of farmworker housing in San Diego, California during normal times. While working to feed us, migrant farmworkers survive in substandard housing. They labor long hours for low wages and are exposed to powerful, dangerous pesticides.

This is normal living conditions. There was no hurricane in San Diego.

This occupation takes its toll as seen in the incidence of parasitic infection that is 35 times more common than the general population. This is the sole water source for this family, that puddle in front. It is not surprising that 20 to 40 percent of all migrant farmworkers when tested have tested positive for intestinal parasites.

Now, with the rising rates of tuberculosis, and on the East Coast what we are seeing is 50 to 300 times more prevalence of tuberculosis than the general public, and we also see a lack of or late prenatal care for pregnant farmworker women.

As Dr. Gaston pointed out, farmworkers have a Third World pattern of infectious diseases, a pattern not suffered by the general public in the United States since early in this century, and the magnitude of these problems is complicated by the fact when clients finally do reach us for care, what might have been an uncomplicated problem, such as a simple hernia, has become severe. This is a simple hernia that has been left untreated for ten years that showed up in my clinic last year. He did not like this hernia. He has worked ten hours that day picking apples, but he had no access to health care.

Migrant farmworkers exhibit some of the worst dental manifestations of any population in the country. When they are asked, migrants and seasonal farmworkers place dental problems at the top of their list of health problems.

And this is not the worst of the worst. I obtained this picture by going out to a camp and asking if anybody had any dental problems. This is very common.

One of the most tragic aspects of migrant and seasonal farm labor is the labor that we extract from the children. Farmworker children are excluded from the protection provided in the 1938 Child Labor Act. Children as young as 10 years old can legally work in the fields in this country, and thereby annually 300 children die in work related injuries on the farm. Twenty-five thousand children are injured in farm accidents.

Data collection systems make it difficult to determine exactly how many of these children are members of migrant farmworker families, but we can be sure that many of them are because we have all seen them.

The problems farmworkers face can only be eased by a fundamental change in the economic dynamic that is currently in place. This change would include a decreased expectation by the American public for cheap food and the cheap labor needed to harvest it.

I worry about the migrant and seasonal farmworker, and I also worry about those of us who care for them. Migrant clinicians are dedicated people who, like farmworkers, are accustomed to working with very little. We are creative at doing more with less.

But we are frustrated in our efforts to serve the working poor. We are frustrated by the lack of sufficient dollars to address the escalating need in a time of rising cost in the medical industry. We are frustrated by the absence of reliable methods for tracking our clients who need continuing care. We are frustrated by the shortage of mechanisms for payment of medical care.

And although it is estimated that 90 percent of farmworkers qualify for Medicaid, fewer than ten percent ever receive any type of these benefits.

This situation is coupled with a lack of financial support for farmworkers when they are injured while laboring in the fields, workmen's compensation.

We are frustrated by a federal health care system that rewards numbers and not innovations of care.

Now, if I could wave a magic wand, and I have looked far and wide for a magic wand, and if I could wave that magic wand and provide health insurance to every migrant and seasonal farmworker in America today, they would still not receive the care that they so urgently need, and the reason is because there would not be adequate numbers of clinicians in rural practice to care for them.

And when I say clinicians, I am referring to all of those primary care providers, not only doctors, but nurses, dentists, nurse practitioners, physician's assistants, certified nurse midwives, health educators, all of those people who are out on the front lines serving the migrant and seasonal farmworkers.

Currently there is not a primary care infrastructure in this country for any of us, and those minority populations who are hard to reach in remote, rural areas are particularly unlucky. With the rise of HIV and the resurgence of tuberculosis, the picture becomes even more menacing.

As a volunteer migrant clinician, I am lucky because I can choose how I will serve. I have a private practice, and I give my time nights and weekends to take care of farmworkers in my community.

But for many of my colleagues that is not an option. They are shackled with outmoded delivery systems which neither nurture their development, reward their leadership, nor celebrate their sacrifices. Instead of being recognized for their service, they are sometimes viewed suspiciously, as striving for their own self-intentions or as professionally incompetent. Why else would someone want to work with migrant farmworkers?

There has been a lot of talk about finding the secret to retaining primary care providers. Unfortunately what retention too often means is capturing bright, young professionals right out of their learning programs to come to a rural area to practice for all of eternity.

We have to be reasonable. How many of us have had one job all of our lives? How many of us have lived in only one place and worked nonstop in a place that was so needy that we must be available 24 hours a day, seven days a week?

We are asking caring and compassionate human beings to function under circumstances where there is no rest and no one to take your place if you cannot go on. If one of us makes the difficult decision to leave a rural placement to do research or to accept a teaching position or to give our children ballet lessons, then we are considered a retention failure. There is no career ladder for migrant clinicians, and our leadership and advocacy efforts go unrewarded.

My colleagues, the unsung heroes of American health care profession, need your commitment to focus attention on these critical issues and help us to build a viable system of primary health care for the migrant and seasonal farmworker in the year 2000.

Historically, seasonal and migrant farmworkers have worked in a system that virtually constitutes, in my opinion, social and economic slavery. Until this injustice is recognized and this disgraceful system is changed, it will be impossible for health care providers to significantly improve the health care status of these undervalued members of our society.

Thank you.

Ms. Fisher. Thank you, Doctor.

And now our last panelist, but not least, is Valerie Wilk.

Ms. Wilk. Thank you.

I am going to hone in on the workplace hazards that farmworkers face and give you a couple of concrete examples, and then talk about some policy recommendations and issues facing farmworkers.

As has been mentioned, agriculture consistently ranks as one of the top three most dangerous occupations in the United States, along with mining and construction. The hired farmworker men, women, and children who work in the fields who harvest the crops, face a number of hazards in the workplace.

One of them that has been cited by the Commission is the issue of unsafe transportation. I brought a number of articles from around the country which I have placed out on the table in the hall that show various workplace hazards and articles about them, and some of the most graphic have to do with the unsafe transportation.

Our office has gotten a number of accounts of workers being killed or maimed from accidents, vehicle overturns, and crashes, and these situations are ones in which vans have had their seats and all their seatbelts removed so that as many workers as possible can be crammed into the vans. They are driven by unlicensed, uninsured drivers who are often intoxicated, and what happens is that these vehicles, and workers may be carrying sharp tools on their laps as they are being driven to the fields.

One of the cases that happened in Florida about a year ago was a van plunged into an eight foot irrigation ditch and seven Guatemalan farmworkers died. They drowned in the irrigation ditch.

Children have been involved in these transportation accidents, and workers. To boot, workers are charged for this unsafe transportation.

I am going to focus most of my remarks on pesticides. About 70 percent of the 1.2 billion pounds of pesticide products that are sold in the United States each year are used in agriculture. Farmworkers are on the front lines of this exposure to pesticides.

They absorb pesticides through their skin by touching the foliage and the produce that they harvest, which has been treated with the pesticides. Too often they are drenched with pesticide sprays by being required to work in the fields even as the fields are being treated.

They come in contact with pesticide drift when an adjacent field or work area is being treated, and they can get sick from this pesticide drift.

In terms of migrant farmworkers, the whole family may live in a labor camp that is located right in the middle of the field where they are working, and thus, the work place exposures and the living exposures are the same, and when the fields are sprayed, the housing is sprayed.

Too often workers may have to have their only source of water being irrigation ditches, and that water is contaminated with pesticides and with fertilizers.

Now, pesticide exposure can cause either immediate or acute effects or long-term, chronic effects. Some of the short-term effects are pesticide poisoning. Severe poisoning can cause death. Moderate and mild poisoning symptoms include things like nausea, vomiting, headaches, dizziness, muscle cramps, blurred vision. We have found that workers having these acute poisonings can go for months having recurring symptoms like headaches, fatigue, blurred vision.

In terms of the long-term effects of pesticides, human health studies, case reports and animal data show that these include cancer, birth defects, other reproductive problems such as sterility and menstrual dysfunction,

miscarriages, liver and kidney damage, nervous system effects, such as problems with motor coordination or abnormalities in terms of thought processes, anxiety and depression, and also abnormalities of the immune system.

One of the crucial issues in terms of pesticides for farmworkers is that farmworkers right now do not have the right to know what is being used in the workplace. Now, the new EPA regulations, when they go into effect, will provide some particular information for farmworkers and training. Laws and regulations are only as good as the enforcement, and what we have found is that enforcement has been abysmal in terms of workplace regulations and laws.

In terms of current regulations, we have found that employers who are required to provide drinking water, toilets and hand washing facilities in the fields--we have gotten reports from organizations that have done surveys in, for example, New Jersey and North Carolina--and only a small fraction of employers are fully providing all of what they are required to provide.

In terms of right to know, farmworkers need to have the right to know what pesticides are being used, and also something that they do not have and will not be given in these EPA regulations is the right to take action when unsafe work practices exist.

This points out some of the problems with the current federal pesticide law. The law does not include a statutory provision for right to know for farmworkers. It also does not provide, and what is desperately needed is, a mechanism by which farmworkers can take action to require the employers to provide the protections that are required.

For example, by relying solely on federal or state agencies, we know that the enforcement has been very, very lax, and as I say, abysmal. Employees, the farmworkers, need to have the right to sue the employer if there is a failure to comply with the regulations and law.

In terms of hazard communication or right to know, one of the things that is in the works now is that with the worker protection regulations which will go into effect next year, EPA is requesting comment now on a section about hazard information or hazard communication, and the comments on the regulations are due on October 20th. One of the things that is crucial is any information that is provided for workers must be understandable by the workers, must be usable by the workers. Having solely technical information that is written for post-graduate researchers is not going to be useful for farmworkers. They need to know what the hazards are of the chemicals in their workplace and how to protect themselves.

I would like to highlight an example of something that is happening in Florida right now. In early 1992, the Florida Department of Health and Rehabilitative Services began to get reports from growers who had had crop damage by a fungicide called Benlate. It is a fungicide that is used quite heavily in the greenhouse and nursery industry in Florida.

And the state went out and interviewed all of the growers and their family members who had reported health complaints. Now, these health

complaints ranged from things like cancer and birth defects to central nervous system problems like severe and recurring headaches, also respiratory problems, such as shortness of breath, sinus problems, nose bleeds, and also chronic fatigue and swollen and achy joints.

The health department interviewed these growers and their affected families, and they issued a report in September of this year, and they did not come to a definite conclusion of what was causing these health complaints, but they called on the EPA, the Centers for Disease Control, and the National Institute for Occupational Safety and Health to further investigate the situation.

The state did not interview any of the hired workers that were at those workplaces of the growers who reported complaints. Instead, what the state did do is mention in letters to CDC, NIOSH, and EPA that there were an estimated 120,000 nursery and greenhouse workers in the state, and that if they knew of the situation of Benlate and began to seek medical care, there could possibly be hundreds of cases of workers' compensation claims filed.

The Farmworker Association of Central Florida, which is a multi-racial, multi-ethnic farmworker membership organization which is based in Apopka and has an office in Pierson, FL, has issued demands to the State about Benlate, to the state health department and also the Agriculture Department, as well as to federal agencies.

I have included in my statement a copy of their press statement, and some of the things that the association is demanding is this very right to know. They are demanding that a list of the growers who use Benlate be provided to farmworkers so workers can know if they were exposed and when they were exposed to Benlate.

And also the migrant health center based in Apopka, Community Health Centers, has written to the state and requested information because health care providers have not been given information on what to do if patients come in and describe these symptoms or say that they have worked in nurseries and greenhouses.

So both the workers and the health care providers need information.

We are working with both the association and the migrant health center as part of our farmworker health and safety training institute, which began this year and is funded by the W.K. Kellogg Foundation and the Nathan Cummings Foundation. We will be working with those organizations as we get more information. We have been providing them with information about Benlate.

One of the other points I would like to make is this problem with enforcement. We have seen that federal agencies have been dragged kicking and screaming into protecting workers or being required to issue regulations and to enforce them.

Lou True mentioned that the regulations, the EPA regulations, will go into effect next year, were issued in August. That was the result of eight years of effort, and in the last year, the U.S. Department of Agriculture was able to stall that process because they did not want the regulations to be issued.

We have problems with the regulations because there are a number of loopholes, and we are very concerned that, for example, yes, workers are required to be trained, but they only need to be trained once every five years.

In addition, there is a grace period before which workers have to be trained, and workers could be poisoned in that time before they get the training. It is a 16-day grace period during the first five years that the regulations are in effect, and then it will be employers will have six days in which to make sure the workers are trained.

One example of very egregious lack of enforcement of pesticide laws and regulations is an example from Arizona. A 1990 report by the state Auditor General's Office, which was asked to look at the enforcement record of all of the agencies in the state enforcing pesticide laws, found that officials routinely refused to investigate pesticide complaints of misuse. They discouraged field inspectors from doing so. They conducted incomplete investigations of complaints, and they even refused to fine even the most flagrant repeat violators.

That report shows a case of two farmworker children, one boy who was in a coma because he got into an area where pesticides had been illegally dumped, and the state only fined the employer \$150, even though the child almost died.

One last thing I would like to mention is in terms of the migrant health program and the need for the migrant health centers to have the adequate technical assistance to be able to deal with environmental and occupational health issues.

An important component of the Migrant Health Act is that the migrant health centers provide environmental health services, and the recurring reasons for medical visits to the clinics are very much tied to the poor environmental conditions and the workplace hazards.

So the migrant health centers really need help in dealing with those issues, given their lack of resources and the time demands on the staff to provide the primary health care.

The Migrant Environmental Services Assistance (MESA) project, which is part of the Rural Community Assistance Program based in Leesburg, VA, has provided such assistance to migrant health centers for over 12 years, a very important service in terms of pesticide projects, field sanitation, housing assistance to the migrant health centers and to the areas where they serve farmworkers.

Farmworkers and their families must be protected from a harvest of illness, injury and death from exposure to poisons and from other deadly and unhealthy workplace conditions. These briefings by the Helsinki Commission are a valuable way to bring these conditions to the attention of the U.S. Congress and to the American people.

Thank you.

Ms. Fisher. Thank you very much.

I have just a couple of questions that I would like to start out with, and then we will open it up to the floor, and I would ask any of you who do have a question to put to the panelists to please use any one of the three mikes that are available.

Dr. Gaston, you mentioned that your primary goal was that of access, and one of the complaints that we are hearing is that workers cannot really leave to go get treatment because they are paid by an hourly wage, and they will get docked.

Are your clinics going to be open in the evenings? I mean is that part of your program, and do you find that workers are reluctant to seek medical treatment because they know they are not going to get compensated for the time that they miss during the day, and is there any way that that can be addressed?

Dr. Gaston. That is an issue. Many of our centers do provide services that are outside of the working hours. That is one of the advantages, we think, of having our community based, community controlled programs, in that our boards are very involved in helping the health centers set the hours and address the needs of the community they are trying to serve.

I think that with some increase in funding this past year that we had, albeit very small, one of the things we attempted to do is to provide programs with some additional dollars for outreach.

There is no question that we need to do more in terms of getting to the farmworker community, going to them, rather than sitting in our health centers waiting for them to come, and I think that is an important aspect of improving access.

Programs are beginning to request and get funding for mobile vans to go out into the fields and provide care right there, but we continue to be concerned about the fact that we need to penetrate better the communities we are trying to serve, and we are looking for innovative ways to do that better. Mobile vans is just one way that programs are choosing to do that.

Ms. Fisher. Do you find that the farmers, the growers, cooperate when you broach them with on-site field visits? Is there any problem?

Dr. Gaston. I have not heard of any, but I must say that I would yield to experiences from other panel participants.

Ms. Fisher. Does anybody care to comment on that?

Mr. Duran. Yes, we find traditionally that farmers do not always deny access. Obviously if the staff do go out to the fields, that does become a problem, but for the most part, they do have some access to migrant camps, and they frequently visit them during the evenings through their outreach programs, and so forth.

However, there are those instances where there are farmers that do prohibit staff from not just clinics, but from other agencies, from coming in and providing or attempting to provide services to the farmworkers.

Ms. Fisher. Then how is that brought to the attention of the authorities, or is it? I mean is there any recourse?

Mr. Duran. It is, but a lot of times they tend to look the other way, and down the seriousness of the situation. You have to understand that you are dealing with the local law enforcements, as well as many of the times those farmers are deep rooted in terms of politics, as well as access to those law enforcement agencies.

So a lot of time they do look the other way in a lot of instances.

Ms. Fisher. So it goes back to the point Dr. Gaston was making in her presentation about the need for cooperation at every level.

Mr. Duran. Most definitely.

Ms. Fisher. I have one question of Mr. True.

In your EPA regulations, you mention that workers would be given equipment or protective clothing. Will that be supplied free of charge by the growers?

Mr. True. The regulation does provide that all personal protective equipment must be not only supplied by the employer, but also inspected, cleaned as necessary, maintained--instance, replacing cartridges for respirators.

Ms. Fisher. Will you have mechanisms in place to see if this is being complied with?

Mr. True. Well, we have to remember that pesticides are already regulated, as Ms. Wilk indicated. The principal enforcement mechanism for the pesticide law at the user level is state lead agencies which receive grants from the government.

For the most part those are state departments of agriculture, and there is already an enforcement mechanism in place for this kind of program. It is technically called a misuse enforcement program. These are typically triggered by tips or complaints from affected workers.

This regulation will be subject to the same enforcement mechanism. For example, there is already personal protective equipment on individual pesticide labels which are enforceable. This regulation strengthens those and creates additional duties.

So now it is no longer an enforcement issue only if the personal protective equipment is not supplied. It would also be an enforcement issue if the personal protective equipment were not in adequate condition or did not fit properly, for example.

Ms. Fisher. Thank you.

Ms. Wilk. Could I respond to that also?

Ms. Fisher. Certainly.

Ms. Wilk. The reality is that personal protective equipment is not right now, even before these new regulations go into effect, is not provided for farmworkers. We have had testimony from workers who in the nursery industry, in the fern industry in Florida, who have had to work dipping ferns into vats of water that have pesticide solutions in them, and they are up to their armpits with absolutely no gloves, no protection.

It brings the importance of enforcement, but if what we have seen with field sanitation, for example, is that it is not the workers who are going to

complain because they do not want to lose their jobs, and intimidation is a big factor.

So EPA and the state agencies are going to have to do a lot of inspections and get reports from advocacy organizations to make sure that the regulations are enforced.

One of the things about the new regulations that is very troubling is that, yes, there are requirements for personal protective equipment, but one of the loopholes is that there are situations where workers can go in for early--they are called early entry workers. They can go in before the reentry time has expired. This means that they are going to need personal protective equipment.

There is also a proposal for a special exception for the cut flower and the fern industry to allow workers to go in before the reentry time has expired and do routine hand labor, and we vehemently oppose such exceptions.

We see that if this happens with one industry, various other sectors of the agricultural industry are going to ask for similar exceptions, and the regulations will be further diluted.

Ms. Fisher. Did you care to respond to that, Mr. True?

Mr. True. Certainly. We should point out that in the discussion we had earlier about personal protective equipment, it is the agency's position that personal protective equipment for routine hand labor in fields is not appropriate; that we believe that there are too many incentives to remove it; that some personal protective equipment, in fact, carries its own risks.

So in designing the regulation, the agency tried to balance the realities of agriculture and the critical need to protect workers. As a result, there are really three categories of employees who are affected or which the rule addresses in different ways.

The first is field workers generally. Those workers are prohibited from entering a treated area during the restricted entry interval after an application, which ranges from a minimum of 12 hours, in the case of the restricted entry intervals that will actually be established by the rule, up to 3 days. There are already existing reentry intervals that are quite a bit longer than that for individual pesticides, which will be retained.

Those workers have no personal protective equipment requirements because we believe that the residue levels in the fields will be so low that there should not be such a requirement.

However, in the event that there are some hot spots in the field, spills or drift from nearby application, the agency is requiring that those workers be provided with decontamination equipment, for example, for routine washing of hands and face before eating and so forth.

The second category of workers are those that Ms. Wilk mentioned, which is those who perform early entry during very narrow, special exceptions set by the rule. Those workers must be trained before they undertake any such duties or enter any such areas. They must be provided with personal protective equipment, and all of the duties I mentioned before, to inspect, clean and maintain and provide that equipment does fall on the agricultural employer.

The third category is agricultural handlers. By the way, the agency has extended its definition of agricultural handler or pesticide handler to include flaggers, people who adjust or repair contaminated application equipment, and a variety of other categories of employees who customarily had not been treated as agricultural pesticide handlers.

Those individuals have a training requirement that is more intensive than that for either early entry workers or field workers. They, too, have personal protective equipment requirements with all the duties that I mentioned.

We do share Ms. Wilk's concern about early entry, that is, entry during a restricted entry interval. We do believe that under some circumstances it can be undertaken with care. Our concern is when that becomes routine, noncompliance with the requirements could be so widespread as to jeopardize the worker. That is why we have restricted it.

We do believe, however, that when it is a special circumstance that enough attention can be focused on it. The agency is mounting a significant outreach program to try to convey to agricultural employers the importance of these requirements. We therefore have reasonable expectation that personal protective equipment will be worn and provided and maintained as appropriate, and that the training will be provided.

If the evidence after a few years indicates that that is not the case, then the agency would certainly consider revising the regulations. I have to note, however, what a contrast the present regulations are to the existing regulations in which workers may enter treated areas during restricted entry intervals, or as they are now called, reentry intervals, when they are wearing clothes like all of us are wearing now, a long-sleeved shirt, long-legged pants, shoes and socks.

That apparently made sense in 1974 when those regulations were promulgated, but by today's standards, we consider that inadequate, and so this regulation, even where it permits entry into treated areas, provides vastly stronger protections for workers.

We do agree that understanding of these regulations, which are new and complex, and compliance with them is a critical element in their having any effect in the real world, and the agency is focusing a lot of resources on trying to see that that is done.

Ms. Fisher. Yes, the young woman in the back.

Audience Participant. I assume that the EPA and other regulatory agencies concerned with the health impact of pesticides rely on assumptions about standard applications to fields. I wonder whether there is any monitoring of fields to see if applications are, indeed, what they are expected to be.

That is my question.

Mr. True. When you are talking about foodstuffs, the agency not only sets application rates, but they set tolerance levels on harvested commodities. Those foods are monitored principally by the Food and Drug Administration.

I should mention in that connection that it is very uncommon to find pesticides over tolerance, that is, where the residues exceed the legal residue limits. It is more common to find pesticides being applied to crops to which they should not be applied. In general, that is a dietary risk concern as opposed to a worker risk concern.

That is not to say there are not errors. Farmers and pesticide applicators are human, and they can mix pesticides incorrectly, calibrate their equipment incorrectly, and all of that can cause higher residues and, for a variety of reasons, higher exposure to workers than we would anticipate. That is why the new rule has what I would consider just basic, prudent industrial hygiene measures for workers in areas contaminated with pesticides, such as that decontamination water be provided and that basic pesticide safety information be provided.

We cannot exclude the possibility of error.

Ms. Fisher. Yes.

Ms. Rottenberg. Hi. My name is Laurie Rottenberg, and I am with the Association of Farmer Opportunity Programs. I have a question for Mr. True.

Getting back to Val's concern about kind of the domino effect of letting one industry have early entry intervals, do you foresee additional petitions coming into that effect in light of the fact that the agency is still accepting comments on that part of the final rule, right? That they still want more information, more data on the entry interval, early entry interval?

Mr. True. Let me try to restate the question. What Valerie was talking about is that the agency in the final rule established a mechanism whereby anyone may petition the agency for an exception to the rule's prohibition of routine hand labor in treated areas during restricted entry intervals.

In that connection, the agency, at the same time that it promulgated the final rule, proposed the first such exception. That was for the cut flower and fern industry, as Ms. Wilk indicated. It was based on the information that the agency obtained during the comments it received on the proposed rule, which was issued in 1988, from the cut flower and fern industry, which persuaded us of two things at least tentatively. This was, one, that the economic consequences to the cut flower and fern industry of being unable to harvest flowers which often have to be harvested several times a day during restricted entry intervals, would be severe. There really was a concern that could not readily be dealt with through ordinary management, that is, scheduling of pesticide applications so that they do not coincide with the need to have workers enter fields.

And, the secondly, that the conditions in the cut flower and fern industry tend to lend themselves to personal protective equipment in two senses. One is they generally have some additional control over the environment, sometimes through ventilation, sometimes through shade provision, often through ready availability to running water, for example.

In addition, the tasks being considered, harvesting of flowers, usually with shears, were tasks which we felt could be practically performed wearing

personal protective equipment, which in the case of an early entry worker is no less than coveralls and chemical resistant gloves.

There are other tasks which require hand labor, certain horticultural tasks for pinching off buds, for example, which we think could not be practically performed, and for which there would be a large incentive for noncompliance. Those are the kinds of uses where the agency will take a very dim view of any proposal.

Now back to your question, which is: do I expect other industries to request the same kind of exception which the agency is considering for cut flower and ferns? Yes, credible requests would be those, again, where pesticide use and hand labor tend to coincide in time.

So, for example, if there is a late season application of pesticides necessary and hand harvesting, that is where we might expect industries to come in and make a case before us.

But we need two things to be demonstrated to us: one, that the need is real; and, two, that workers can be adequately protected, before we would consider granting such a request.

Ms. Rottenberg. So then EPA is possibly considering granting that sort of thing to other agencies if those conditions are met?

Mr. True. For other crops, yes. Yes, we are considering it.

Ms. Fisher. I have a question for Mr. Duran, if I may.

You are chairperson of the National Advisory Council on Migrant Health, which makes yearly recommendations to the Secretary of the Health and Human Services Department. Do you find that your recommendations are well received and acted on, or do you find that it is a struggle?

Mr. Duran. It has been a long struggle. However, I feel that in the last, I would say, two years the department, I think, has taken us a little bit more seriously.

You have to understand that the historical perspective of this council has not always been very active. In the past this council had met only once a year, and within that one period, you had to compile and make recommendations, and consistently the council made recommendations, but not all recommendations were followed, followed up and followed through.

This council now has taken a very pro active approach and pretty much has demanded of the Secretary that more visibility and the council be allowed to meet more often to be able to discuss, to be able to gather information not just from migrant health centers, but also from the farmworkers themselves, because we see that as our mandate, that we need to find out specifically from them in terms of their concerns, as well, not just from the folks that are providing the services and the administrators who administer the programs at the Federal level.

We have come a long way. We have got a very long struggle ahead of us, and I think that we are making some waves, but we still have a long way to go.

Can I just point out something a little bit in terms of access? Because I was not very, very clear in terms of indicating there are a lot of states that do have some state regulations as it relates to access. Just to give you an example, in Wisconsin, we do have state regulations, and we have a very strong regulatory agency that does monitor very, very closely access to migrant camps.

It prohibits farmers and anyone from prohibiting any advocacy agency or any service agency from visiting with the migrants in their migrant camps.

However, those states that do not have regulations, and even those that do have, but do not have a strong regulatory arm, those types of abuses do occur, where crew leaders will deny access to anyone, and to the point of dealing with the migrant population as slaves.

Ms. Fisher. In other industries, in chemical factories, for example, are health inspectors allowed to just go in? I mean is that normal for industries or employers to be able to bar access like that?

I am just asking maybe Dr. Gaston or Mr. True.

Mr. Duran. I am not aware that there has been major problems in that, but I know that there has been instances where follow-up has not occurred on a timely basis, investigations. I am not aware that they have been denied access such as that, but I know that there has been problems when there is investigations in the fields or even in migrant camps. There has been problems in that area.

Ms. Wilk. Let me just say in terms of OSHA inspectors getting into factories and plants, I believe that they can get a warrant to go in. They notify the industry, but they have the right for access, yes.

Ms. Fisher. Yes.

Mr. Hancock. My name is Mike Hancock, and I work with Val Wilk at the Farmworker Justice Fund, and this is, I guess, directed at the members of the federal agencies, Dr. Gaston and Mr. True.

One of the problems that I think has been identified and, I think, is worthy of some further exploration is the whole question of coordination and integration of the various federal agencies, in particular, that deal with this broad range of farmworker health and safety.

We have the EPA dealing with pesticide related issues. We have HHS dealing with delivery of medical services. We have OSHA dealing with another aspect of health and safety; Department of Labor. It is just a sort of diffused and dispersed range of agencies trying to deal with this broad problem.

And I think an emerging recognition is that there is this lack of effective coordination among the various agencies on this, and I was wondering if Dr. Gaston or Mr. True would have any ideas on how that can be better coordinated both in terms of delivering services to farmworkers, but also gathering information about farmworker health and safety, trying to make some sense out of this difficult problem.

Dr. Gaston. There is no question, as I mentioned, this is a key aspect of trying to improve the health and everything else that is going on in terms of our farmworker population.

As you heard, the Council recommended to us, in particular, and to the Secretary that a high level interagency committee be established which would really begin to look at that issue across all of our agencies, and we fully support that approach and expect that at some point that will certainly happen.

But, again, as you say, that is not the only level where this has to happen. It has to go all the way down to the local level, and so we are trying to obtain input from our various consultants and advisory committees on how to best do that.

We are looking at innovative ways. One of the things we are starting as a bureau, is to--and this is new--is to put out in each stream a migrant stream coordinator whose job is to do nothing but to help promote that kind of coordination, integration, collaboration; where it is not occurring, to act as a gadfly to try to see that it does; and also inform us of what is happening.

It is a major challenge, and if you have some ideas on how we can best do it, we welcome them.

Mr. Hancock. Well, I do not have any ideas. I assume you are aware that the Administrative Conference of the United States has looked at this specific problem and has made some recommendations.

Has your agency or EPA or any of the others that you are aware of taken a position on those recommendations about coordination?

Dr. Gaston. Not that I know of.

Mr. True. Yes, I am not aware of any particular position the EPA has taken on those recommendations.

I would say I am sure I agree with you, Mike, that more could productively be done, but I would like to point out that in spite of scarce resources, EPA has tried to go beyond its regulatory requirements.

It may not be as much as we would like to see, but EPA does produce and distribute for physicians a book on the recognition and management of pesticide poisonings and does fund some training programs for health care providers in that subject as well.

We also look at the network of migrant health clinics as being a principal outreach resource for us, and with the new and much broader training requirements of the new worker protection regulations, again, we plan to support and exploit that network to the maximum extent we can.

But I agree with you that more needs to be done, and not just with the migrant health program, but also with OSHA, and there has been an increased pace of coordination activities with OSHA. A lot more needs to be done even in the pesticide area, I believe.

Dr. Gaston. Let me just mention, too, a lot more needs to be done, but under the leadership of Mr. Duran and the council's increased activity that he spoke to earlier, they are playing a major role in making sure that that comes about.

As a matter of fact, they have had a couple of meetings where they have brought Deputy Assistant Secretaries of HUD and various agencies to the table to discuss these issues for two days, and so we are beginning to see some progress, albeit slow.

Ms. Johnston. I am Helen Johnston. I was in at the beginning. Excuse me. I lose my voice every once in a while.

I was in at the beginning of the migrant health program, and one of the things I tried to find out was what had happened before us. Mr. Duran went back to the 1960's. That is the time when I really got started, but I found that people had been discussing the migrant health program, the migrant health problem as far back as the Theodore Roosevelt Country Life Commission.

The Theodore Roosevelt Country Life Commission made some of the same recommendations that you are making today in slightly different language, and we have been at it for more than 100 years. You could go back in the 1880's, and you could find recommendations being made to improve the conditions of migratory farm labor, as well as other farmworkers.

I think this is no credit to our democracy, and it is no credit to our democracy that we do have a Migrant Health Program which is a bandaid. It is a bandaid to take care of the problems that would not occur in other industry. They would not occur because workers in other industry are members of a community. A community has power.

Now, there was one effort in the past to give farmworkers that kind of power. It was at the beginning of the Franklin Roosevelt administration when the Farm Security Administration experimented with farm labor housing essentially to provide a community for farmworkers.

I cannot remember exactly how many such farm labor housing units there were scattered over the United States, but it was more than 100, and essentially, these were farm labor supply centers with housing that would accommodate a family that had safe water, safe methods of waste disposal. It had health care provided in the farm labor center on regular hours, and in some cases, nurses on the staff of the farm labor center.

It also had recreation facilities and day care facilities. Now, that sounds awfully ideal, and why didn't it last?

It did not last because people with power did not want it. The people were the employers. They were afraid of farm labor organization, and I am impressed with the fact there is nobody from a labor union here today because the labor unions should be in on this, and the labor unions should be doing something so that Dr. Zuroweste and some of the other physicians and nurses and all the rest would not have to take care of cases of otitis media, cases of poisoning, all of the things that do not need to happen if people have real community.

Ms. Fisher. Thank you.

I visited the Immokalee area earlier this year, and I spoke to an attorney, a very affluent attorney who lived in Palm Beach, who looked at me

with tears in his eyes when he said the reason he took a pro bono case is because he was not aware of the devastating situation affecting migrant laborers, and he said, "It frightened me that this goes on in America, and we mustn't let it."

And he said, "I was afraid for my democracy."

Was there someone else with a question? Thank you.

Ms. Misch. Ann Misch from World Watch Institute.

This is a question for the EPA representative, Mr. True. I wondered whether the EPA in revising standards for farmworker exposure to pesticides took into consideration the potential effect of the synergistic combination of pesticides and/or cumulative impact of exposure over a prolonged period of time.

Mr. True. I was almost out the door. I apologize, by the way. I do have another engagement that I am going to have to attend.

The answer is that the agency recognizes that there are pesticides which do have synergistic effects or that there might be some. We do know that there are some certainly that have cumulative effects, such as the organophosphates. We also know that there are some that may have antagonistic effects.

It is not an area that is very well understood. In designing the regulations, we designed them basically to be prudent measures. There are some who argue, for instance, that the agency should not have required that soap and water and towels be supplied after a restricted entry interval had expired. Whereas the agency required them for at least 30 days after the expiration.

The agency's view is that there are unknown, unknown hazards from pesticides. They are not completely understood materials in many respects, including problems with interactions and cumulative effects, and that besides that, there are errors that happen. There are opportunities for exposure other than through contact with residues. That is, there could be contact through drift, through application to nearby areas.

And, therefore, the regulations were designed to be a prudent set of industrial hygiene measures that protect people against unanticipated hazards.

In terms of the more detailed issues of interactions with pesticides, however, we intend to try to deal with these on a case-by-case basis. We do not know of any way of dealing with them across the board.

I apologize that I have to leave, but Mr. Boland from EPA is here, who will attempt to answer any other EPA questions.

Ms. Fisher. Thank you very much, Mr. True, for being here.

Ms. Yandy. My name is Sharon Yandy, and I work in the Migrant Head Start Program in the Department of Health and Human Services, and I had a question for Mr. Duran about the abuse, the continual abuse of crew leaders, and I was wondering if your commission to the Secretary found that was a recommendation to resolve that problem.

Mr. Duran. Our council has not made a recommendation such as that, although at our next meeting, October, this month, we will be taking

testimony, as well as considering what recommendations we will focus on for 1993.

Obviously we continue to receive alarming reports about major crew leader violations, as well as enslaving conditions around the country. We will have to take a look at that.

There has been other recommendations in the past, and it all depends on how the council advocates those positions and pretty much pro actively force action on the responsible departments to do something about that.

But that is something that is definitely within our scope, and we definitely want to focus on that. Whether that will be a top priority for our next year's recommendations, that will have to be left up to the council.

I cannot tell you directly, saying, yes, that is going to be one of our focuses, but definitely that is something within the scope that we will be discussing.

Ms. Fisher. Yes.

Ms. Steele. Hi. My name is Diana Steele, and I am with Pacifica Radio. I have a question for the EPA representative.

First of all, what is your position with the EPA?

Mr. Boland. I am Jim Boland. I am the Deputy Chief of the Occupational Safety Branch. That is the branch that is primarily responsible for implementing the worker protection regulations.

Ms. Steele. OK. We are all talking about the end product of exposure of migrant workers to pesticides, but how is that exposure considered in the approval of pesticides for use in the first place?

Mr. Boland. EPA requires the submission of data from registrants documenting the environmental toxicology, chemistry, animal studies, with specific toxicological end points. That data are evaluated by our science divisions, fed into the registration division, upon which a decision will be made to register, not to register or require additional data on the pesticide.

So it is a fairly complex and rigorous process that any given chemical candidate would go through before it is registered by the EPA, with health and environmental and other data requirements to be submitted and evaluated by the agency.

Ms. Steele. I guess I would also like to hear Ms. Wilk's comments on that.

Ms. Wilk. Yes, I would like to respond to that. You bring up a very important point.

The problem is that most of the chemicals on the market that are used for agriculture were registered before 1972. There are significant data gaps. We do not know what the health effects are, particularly the chronic health effects.

And I have looked through some of the EPA materials researching specific pesticides for farmworker advocates and unions and groups around the country, and it is appalling. The information that generally is missing is how

much will be absorbed by the workers. How long does it take for it to dissipate in the soil? What exactly--you know, a lot of tests were done that are unacceptable by the agency and have to be repeated.

Recently in the news, there were reports of another laboratory that had falsified information, and the public was assured that this did not really affect the outcome or the safety of the chemicals, and the whole business of the testing and the fact that the pesticides that are on the market, only a handful have been completely tested for adverse health effects.

Ms. Steele. How can we further address that issue through the EPA?

Mr. Boland. Well, I think it is a matter of the complexity of registration itself. Also, I think it is a more complex world today, and EPA has a program to look at the old chemicals and fill in the data gaps.

Unfortunately, it is a fairly resource-intensive program and will take quite a period of time to complete. So it is not easily done, and we have been working at it for a number of years, and will continue to do so.

The worker protection standard establishes interim measures until those processes can catch up through registration and reregistration. So we think we have made some progress there.

Ms. Steele. In the whole process we give the benefit of the doubt to the chemical rather than the benefit of the doubt for protecting workers and protecting the public. It seems to me like it is a very important issue that needs to be addressed as soon as possible.

Thank you.

Ms. Fisher. I have a question of Dr. Zuroweste. How much of a problem is AIDS in the migrant population?

And then a follow-up question to Dr. Gaston. Is that part of your program as well, and what happens to a worker who is tested positive for HIV?

Dr. Zuroweste. Well, up until very recently, that has been a big question of ours. We are just now starting to get some concrete data on the AIDS problem.

AIDS, as you know, is mainly an urban problem, but it has gotten out to rural America now. There was just a very recent study that was just published this last week in the MMWR from CDC in Florida that did a screening on migrant farmworkers, and five percent of the farmworkers in the screening program were positive for HIV. These were unknown positives.

We did the same thing in Chambersburg, PA, last year, a screening program of farmworkers, and we found a little over 6 percent of our population was positive for HIV, and these are alarming numbers for us.

I think whenever we talk about the health status of farmworkers, we have to be very careful about making statements that are universal because this is a statement from Florida, and this is a statement from Pennsylvania. It does not mean that farmworkers throughout the country have a five percent incidence of HIV.

It is a very diverse population, and the East Coast migrant farmworkers are different than the Midwest stream farmworkers and the western coast farmworkers.

And so when I say these numbers, I am always concerned that someone will print that all migrant farmworkers or the national incidence of HIV in migrant farmworkers is five percent. That is not correct. In one population, one small population in Florida and one small population in Chambersburg, PA, that is correct.

But there is no question this is a virus that is being spread all over the country, and migrant farmworkers are not immune to that obviously. The scary thing is the second part of your question, is: what do we do with those farmworkers that are HIV positive?

Like many of the problems of chronicity that we see in farmworkers, continuity of care is an extreme problem. Public health for farmworkers is a real nightmare for us to follow people up and down the stream.

Our network has worked diligently over the last several years in trying to establish networks of clinicians and clinics and communicate the health status of individual farmworkers, but to this point, we do not feel confident that we are doing a real good job on that.

And a lot of it has to do with finances. You know, when you have \$100 a year to take care of a farmworker, there are medications; there are X-rays, and so forth, and then trying to get innovative ways, telecommunications ways of following that, it is very difficult, and many of us are just--it is like Ms. Johnston stated that we are putting bandaids on.

This was supposed to be a supplemental type of a program, and it has become the only program for many farmworkers. We are just trying to put out the big fires, and the little fires are very difficult for us.

Dr. Gaston. Yes, the bureau does administer part of the Ryan White Care Act, Title III, which is the part that focuses on getting support and resources right to the front line programs for prevention, for counseling, for early detection and early intervention.

The agency administers--the agency being Health Resources and Services Administration--administers Title I and Title II of Ryan White. Title I dollars go to the cities; Title II to the states, and Title III, as I said, we are the only ones that fund programs directly to try to implement, again, that very important aspect, which is getting on the front end of things, if possible, in terms of prevention, early detection, and early intervention.

Audience Participant. I had one more question about the standards that were published in August. Were those published in Spanish or would the local level have to translate those?

Mr. Boland. The standards themselves were published in the Federal Register in English. We did produce a summary fact sheet of the standards in Spanish, which we distributed. We had a fairly widespread distribution of that.

We do plan to publish our training materials as bilingual. Also the safety poster that Lou True talked about will be bilingual, and we are also

looking at initiatives to address other, perhaps minor, language groups that are employed in farm labor and have materials translated for them also.

Ms. Fisher. Yes.

Ms. Mitchum. Freda Mitchum with the National Association of Community Health Centers.

We represent a number of the migrant health programs that are funded through Dr. Gaston's department, and we have advocated for years for increases in the migrant health program appropriations with very limited success.

After 30 years of the migrant health program, we now have an appropriation that is not even 60 million for that program.

Given that the appropriations for migrant health have grown so slowly, despite advocacy for their growth, I am curious as to whether the Migrant Health Advisory Council has looked at recommendations for larger level reforms, such as employer mandated responsibility for health insurance for farmworkers or discussions of the creation of a farmworker health fund that might be contributed to both by employers and the government so that we could find some other mechanism for growth for coverage for farmworkers.

Mr. Duran. Yes, that is very much in our minds because as we see that our council had recommended for 1992 an appropriation level of 90 million, and quite obviously very, very short of that is what we are getting. We definitely will have to think of different strategies to somehow effect a change in Congress to have a higher appropriation level because \$100 per migrant that is seen by clinics is ludicrous. It is ridiculous.

We definitely need the funding, and we definitely need to look at strategies as to how to approach this and how to create higher appropriations.

We definitely welcome your recommendations. I know that the National Association of Community Health Centers has been invited to talk to our council at our next meeting, and we would welcome any recommendations that you would have that we could incorporate into our 1993 recommendations.

Ms. Mitchum. Could you just comment on the aspect of employer responsibility for health insurance coverage and whether any subjective mandating employer coverage has been looked at in the past by the advisory council?

Mr. Duran. I am not sure whether before my history, anyway, whether that has been discussed. I know that we have discussed that issue as being a strong concern that any recommendation that we make, that we do not free up that responsibility of the employer.

That is one of the issues that the council has discussed, and hopefully will incorporate those kinds of recommendations into 1993. We just cannot let them off the hook. We cannot let anybody off the hook because the hard labor and sweat of our migrant population provide for this country's nourishment; and we cannot let that happen, to have these conditions continue.

Ms. Fisher. I am not clear on the extension of worker's compensation to migrant workers. I wonder if I might ask Dr. Gaston. Do you know if that is applied at all? Do they have any rights to worker's compensation?

Mr. Boland. I am sorry. Was that a question for--

Ms. Fisher. I am sorry. Mr. Duran.

Mr. Duran. The way it is not all farmworkers have access to compensation. Some states do cover, but not all of the states. It is not very effectively administered. So some of them do have the legal right to compensation. Whether they get it, that is a totally different thing.

Again, enforcement as well as access is a major problem in the benefit area, as well.

Dr. Zuroweste. I would like to comment on that also. As a practicing physician, that is one of our--and when I talk around the country, even in areas where workman's compensation is applicable, it is very problematic whether you get it or not. It is a constant battle for us when someone falls 30 feet out of a tree and injures themselves.

To get them on workman's compensation if they are only in the area for a very short period of time, by the time we get through the paper work and get through the linguistic problems and get through the problems with--the growers usually are not real, real helpful in that. I think that is probably said throughout the country.

If you looked at the number of farmworkers who should be given workman's compensation for injuries on the workplace and how many actually in fruition come through and get paid for that, it is a very, very, very small percentage, and it is one of our biggest headaches.

As a health care provider, we spend a lot of time sometimes working on those issues, and it is very, very frustrating for us. But we feel as advocates that that is one of the things that we have to do, but I constantly hear that one of the biggest headaches in the migrant clinics is trying to get their clients on workman's compensation when they so much deserve that compensation.

Mr. Hancock. If I could just add, I happen to know a little bit about this. Only in 14 states is worker's compensation required of agriculture employers. In most of the other states, it is totally voluntary on the part of the employer whether or not they provide worker's compensation.

Ms. Fisher. Is that just for agricultural workers?

Mr. Hancock. Just for agricultural workers, and so it is spotty, and in some of the largest agricultural states, like Texas and North Carolina, it is entirely voluntary whether or not worker's compensation is provided to agriculture workers.

Even where it is provided in some states, agricultural workers are given lesser treatment under the worker's compensation statutes and provisions, where they get lesser wage replacement benefits than other workers. So there is even exceptionalism in the worker's compensation system for agricultural workers.

And as Ed pointed out, even where it is provided, there are all sorts of barriers to agricultural workers actually perfecting and receiving the benefits under the plans.

Ms. Fisher. Thank you.

Audience Participant. I have got an additional question about the pesticide issue again. This will be for Mr. Boland.

In her testimony, Val brought up the situation of Benlate. I do not know if you were here for that part of the testimony, but what is EPA doing at the national level to address that situation?

Mr. Boland. I do not have specifics on that. I am sorry. I do not have the case information.

Mr. Egan. Hi. I am Jack Egan with Migrant Health Program.

I would like to ask my friend, Dr. Zuroweste, a question. If he could comment about whether or not you feel, Ed, that the organized medicine, like the American Medical Association or some of the other associations that represent organized medicine in our health care system, have done enough to portray this problem of migrant health to the American population.

Dr. Zuroweste. Well, since we are not seeing it all the time, I guess the answer would have to be no. The flip side of that is when we have gone, and I have gone to speak to the AMA and some other national organizations, what response I am always given is that they are very surprised to hear that these conditions exist.

I think we have been very invisible throughout the years in telling the story about what is really happening out there. I do not think it is reticence on the part of organized medicine to not promote this problem. I think it is ignorance more than anything else.

So it is up to us, I believe, to get that story out, and once it is, it is for them to carry the ball.

One of the things that the Migrant Clinicians Network has been trying to do, one of our mandates for ourselves is that we would get public awareness in the medical community much more visible, and we have done a lot of collaboration with the American Academy of Pediatrics, the American Academy of Family Physicians, and the AMA, and we are in our infancy stage, but we are now getting a lot of response from those organizations.

I think, as was said here, what we have done in the past, those of us who have been active in migrant health and the migrant farmworker world, is kind of all talked among ourselves for years and years and years, and we have not been squeaky enough of a wheel, I believe.

I think if this story is told that the American public and the American medical community are very ashamed of what has happened, and I think that the more we tell the story, the more hopefully that will be done, but up to this time, I think, as Ms. Johnston has pointed out, you know, we have been in a very stagnant period of time, and I think it is time to kind of brush the stagnation off and get very aggressive.

Ms. Gross. I am Adela Gross. I am with the U.S. Catholic Conference in the Office of Migrant Concerns.

And I am aware of many of the groups, such as Mr. Duran's, that offer recommendations to the government with regard to migrant health and other migrant concerns, and I am aware of the fact that next month, I believe, the Commission on Agricultural Workers will also submit a report that speaks to a number of the issues that you are speaking about this morning, and I know that they are recommending, for example, in the area of workmen's compensation, that it be extended to all of the states, and also with regard to unemployment insurance and so on.

I think I am making a comment more than asking a question, unless somebody wants to respond to this.

In the area of migrant health, they address especially the issue of the health of migrant children and make the observation that they think that they should have the same access to health care as do the children of any other U.S. worker, which in our present climate is not all that great a statement, I think.

Mr. Becerra. My name is Alex Becerra. I am with the National Council of La Raza, and I just have a minor observation.

I had an opportunity to read the material that was produced by EPA, the fact sheets, in Spanish. Also recently I have had an opportunity to read the material that was produced by the Federal Emergency Management Agency in Florida in the aftermath of Hurricane Andrew.

In both instances, I think the agencies are to be commended for trying to do an effective work of outreach, especially in producing material in Spanish.

I would make the recommendation that sometimes, especially with regard to farmworker populations and other Hispanic populations, sometimes the effort is a little bit deficient in that the material they say they are producing is in very highly technical terms or else it is poorly done, and I think better efforts can be made by the agencies in doing this.

At the same time, I think they are to be commended for doing more outreach because, as the lady said, many years have passed, and a key aspect of federal assistance is outreach.

Thank you very much.

Ms. Johnston. For the children, the American Academy of Pediatrics used to be interested in migrant children, and we met with them a number of times at their request to discuss the problems of migrant children.

Now, I do not know what happened, and maybe nothing happened.

We also used to work with the Rural Health Council of the American Medical Association, which I understand has been disbanded, but maybe we ought to promote reformation in the AMA and the reestablishment of some groups, such as that, that would consider not only the problems of migrants, but of other world populations which are still needy.

Dr. Zuroweste. I can respond to that.

The American Academy of Pediatrics, we were presented to them, and you are right. There was a void there for several years. We presented to them last year.

We now, the Migrant Clinicians Network, have a liaison person on the American Academy of Pediatrics Council, and they have a liaison person that will sit on our board also. So we have formed a very strong coalition with them now, and they are very interested in the migrant children.

Hopefully, again, we have to get these bodies all together, moving in the same direction, and so we have reinstituted that, and hopefully we are not going to let that fire die this time.

Ms. Fisher. Yes.

Mr. Hogan. My name is Pat Hogan, and I am with the Office of Migrant Education in the Department of Education.

My question is either to Ed or David.

We are trying to get farmers more interested in what we are doing and become more a part of our program, and I was wondering if on your advisory board if you have started working with farmers, and whether they have been a help or a hindrance, and is it a requirement that they be on your advisory councils?

Mr. Duran. Well, it is not a requirement of all advisory councils that they have growers on those councils, but our council does have some representation. Mr. Bill Garrison from Hendersonville, NC, who has served on our council for numerous years now, has been very, very effective and very, very helpful in presenting the growers' point of view.

However, it has been very difficult to get just the farm community to participate with advisory councils such as ours. It was fortunate that we do have him as a representation, but very limited.

We have invited the Farm Bureau. We have invited other farm organizations to meet with us to discuss some of these issues, and quite frankly, they have not shown up.

We will continue to work towards that because I think that is a mutual dialogue that needs to occur if we are going to succeed in improving the health conditions.

Even in talking about employer sponsored insurance coverage, we can make as many recommendations as we want to to the Secretary and to all of the departments, but unless we have that direct dialogue with them, we cannot do much.

Mr. Hogan. Yes. I think we need to realize that the federal government is doing for the farmers what a lot of other businesses have to do for themselves, I think, in education and in health and Head Start and a lot of the other projects that the federal government is paying for, and I think we can start to put an emphasis on working with the farmers more and more.

Thank you.

Mr. Duran. Thank you, Pat.

I think they have to understand that all of these programs are another subsidy to their ongoing subsidies to their crop programs, and they need to be brought in and sit at the same table to enter into some dialogue.

Ms. Fisher. Our next briefing will look at children and family issues, including education.

You know, this business of cooperation, it goes to the heart of the problem here. Political will goes to the heart of the problem here.

I have to believe that the American people, if they really, really sat down and thought about that grapefruit that they are eating at breakfast and the abuse of the workers who gave them that grapefruit, that they would want something to be done and something to be done quickly.

I have met many, many dedicated government workers. We have fine examples of doctors, of legal services people who are really the unsung heroes of America. There are a lot of dedicated people working on this issue.

But I think we need to be honest. We need to have political will in sitting administrations and in Congress.

Ms. Wilk. Could I add something?

Ms. Fisher. Yes.

Ms. Wilk. I wanted to add onto a couple of things that both Ms. Johnston and you from the Migrant Head Start said.

First of all, the farm labor unions have gotten more progress in terms of workplace health and safety through labor contracts. For example, the United Farmworkers of America got some pesticides banned in their workplaces before the EPA ever acted.

And currently the Farm Labor Organizing Committee, which is based in Toledo, their contracts for tomato and pickles, the pickle fields, include things, bans on particular pesticides, the guarantee of field sanitation facilities, and other benefits that nonunion workers do not have currently.

And unfortunately, only a very small percentage of the farm labor force is unionized, and there are laws that prohibit collective bargaining and organizing in agriculture, and so we can say that, well, we have to do for the farmworkers, but if there are barriers for them to work for themselves, those have to be addressed also.

And in terms of the farm labor contractors, employers must be responsible for the actions of the farm labor contractors. The employer can take a step back and say, "Well, I am not the employer. It is the farm labor contractor."

But employers hire those farm labor contractors, and they know the abusive conditions, the unsafe transportation, the conditions in the labor camps, the peonage that occurs, and they have to be held responsible for that.

Ms. Fisher. I would make the observation that that was one of the recommendations, as I recall, in the report that former Secretary of Labor Mrs. Dole made after she paid a visit to Immokalee, and she noted that that was one of the real problems, in addition to the lack of enforcement.

Unfortunately, that report does not seem to have been acted on.

Any other questions?

Dr. Zalar. My name is Dr. Mary Zalar. I am a physician, and I am past vice president of the American Medical Women's Association for the metropolitan area.

I will say that my observations, which are two, are only representative of my personal opinion and not of any organization.

Both through my training and my own volunteer work as a physician, I have had long-term exposure to socially compromised and medically compromised communities here and in Eastern Europe, and I would say, number one, that the most effective way of reaching any socially compromised community in terms of medical and health services is by outreach, whether you are talking about inner city Baltimore or Eastern Europe. I am not familiar with the migrant health community, but two of my sisters have been.

You are talking about outreach, and you are talking about community health centers.

My second observation is in terms of workmen's compensation. As a physician, workmen's compensation means diddle-squat to me in terms of monetary compensation, and that is not what I am looking at when I address this question to you or make this observation.

I really could care less, and the same is true of my colleagues about workmen's compensation. It is not worth the paper work it takes to get it finished or the time.

I would only say that a federal mandate on business, whether it is about workmen's compensation or some other component thereof, in my mind anyway, in my personal experience, is not a panacea. I think increased funding for community health centers and for outreach strictly from the medical perspective would be a better use of resources, and perhaps these farm subsidies which we have been so generous with at least during the ten years that I worked on the Hill before I went to medical school might be redirected toward community health centers and outreach programs to address the kinds of issues that have been outlined by the panel.

Ms. Fisher. Thank you.

Well, I think that we will conclude then. I would like to thank all of our panelists and those of you in the audience who joined us today.

You know, I have visited people all over the world whose rights are being abused, and I am constantly struck by the extraordinary ability of human beings to maintain their human dignity in spite of the abuse that is done to them. I think that migrant workers, if we would let them, not only contribute to the agricultural industry in this country, but they could contribute so much more to the value system of this country.

So I hope that all of you who have dedicated your careers to this issue will continue to do so and continue to push for greater public awareness of the issue.

Thanks very much.
[Whereupon, at 12:18 p.m., the hearing was adjourned.]

MIGRANT FARMWORKER CHILDREN

Friday, February 19, 1993.

Washington, DC

The Commission met, pursuant to notice, in room 2237, second floor of the Rayburn House Office Building, South Capitol Street and Independence Avenue, NW., Washington, DC, at 10 a.m., Jane Fisher, Deputy Staff Director, presiding.

Present: Jane Fisher, Deputy Staff Director.

Also present: Dr. Frank Corrigan, Hazel Filoxsian, William Gross, L. Diane Mull, Senator John D. Perry, and Wendell Rollason.

Ms. Fisher. We'll get started. I'm Jane Fisher, Deputy Staff Director of the Helsinki Commission. I want to thank all of you and all of our witnesses for your commitment and your fortitude in coming out on such a cold day to this, our third briefing on issues concerning migrant farmworkers in the United States.

We have had two prior briefings. Our first one looked the overall problems facing migrant workers. The second one focused primarily on health issues, including exposure to pesticides. Today we're going to look at childrens issues and education of migrant workers.

A final briefing, which we'll hold in a month or two, will address what we hope will be some solutions to problems that have gone on for far too long in this country.

I see a lady sitting in the back who at our last briefing stood up and said that she felt that it was like listening to a broken record, some of the issues that have gone on for so long and are still not being addressed by our country, which is a shame.

So, without further ado, I'm going to ask our panelists to give brief opening statements. And then at the end of the last witness' statement, we'll open the session up to questions from the audience.

We will start with Dr. Frank Corrigan. He is the Director of the Office of Migrant Education, the Office of Elementary and Secondary Education with the U.S. Department of Education, a position he has held since 1989.

He has served in various positions with the department for over 20 years, including Director of TREND, Targeting Resources on the Educational Needs of the Disadvantaged.

Dr. Corrigan?

Dr. Corrigan. Thanks. I appreciate the opportunity to be here and to describe the Migrant Education Program to you.

This program provides a wide range of educational and support services to migrant students, focusing on their special educational needs. We address two groups, currently and formerly migratory children.

Currently migratory children are those who have moved across a state or school district line in the past year with or to join their parents or guardians seeking temporary or seasonal work in agriculture or fishing. And formerly migratory children are children whose last move was in the past 12 to 60 months, namely 1 to 5 years after the first move.

The Office of Migrant Education administers four basic programs responding to the special needs of these students at different points in their educational development.

The largest program provides formula grant funds to the states to be used for supplementary education and support services to meet their special educational needs.

Funds are allocated through a statutory formula that is based on the number of eligible full-time-equivalent migrant children 3 through 21 years of age residing in the state within a calendar year.

This is also multiplied by the states' per-pupil expenditure within 80 to 120 percent of the national average. Over \$300 million were allocated for this program in each of the last 3 years.

State program funds are used for remedial, compensatory, bilingual, and multi-cultural instruction as well as vocational and career education services, special guidance counseling, testing, health services, preschool programs, and other similar activities.

The demographics of this, the largest program have changed significantly in recent years. For instance, the numbers of migrant children identified for the program have increased from approximately 475,000 in 1985 to approximately 625,000 in 1991.

Our projections anticipate a further increase of 100,000 students by the year 2000. They also show an increase in the proportion of Hispanics among the migrant student population, rising from between 1985 86 to 1989 90 from 75 to 79 percent of the total number of pupils served.

Two other Office of Migrant Education programs, focus on helping students graduate from high school and to get through their first year of college.

The HEP, High School Equivalency Program, is designed to help individuals over the age of compulsory school attendance, usually after age 16, to obtain the equivalent of a secondary school diploma and subsequently employment or begin post-secondary education or training.

To be eligible, an individual or their family must have been engaged in migrant or seasonal farmwork or have participated or be eligible to participate

in either the Chapter 1 Migrant Program or the Migrant and Seasonal Farmworker Programs. And he or she must not be currently enrolled in school. With an appropriation of approximately \$8 million in program year 1991 92, there were 23 HEP projects with almost 3,100 participants.

The College Assistance Migrant Program can with an appropriation of slightly more than \$2 million assist students who are enrolled in the first undergraduate year at an institution of higher education to complete their program and to obtain financial assistance, particularly from other resources, if they go beyond that first year.

The eligibility requirements for this program are similar to those for the HEP program. In program year 1991 92, there were seven CAMP projects around the country, enrolling almost 400 participants.

Another, the Migrant Even Start Program is a family-centered education program which involves migrant parents and their children ages zero through seven in a cooperative effort to enable parents to: (1) become partners in their children's education, (2) assist migrant children in reaching their full potential as learners, and (3) provide literacy training for the parents. In this program, priority is given to currently migratory children. Formerly migratory children are only served when space is available.

There are currently nine such projects, Migrant Even Start projects. And we anticipate up to six more may be funded next year. This program is the product of a three percent set-aside on the regular Even Start Program.

In addition to administering the programs noted previously, the Office of Migrant Education has a mandate to carry out special activities that enhance the interstate or intrastate coordination of migrant programs.

Under Section 1203, there are two mandated activities. One is the Migrant Student Record Transfer System, or MSRTS, as it's commonly known. This is a computerized data system which maintains individual records on approximately 1,200,000 migratory students, children, actually, from birth through age 21.

These records include academic, health, and related data on each student. The MSRTS central site computing and data storage facility has been based in Little Rock, Arkansas for over 20 years now.

There are 230 MSRTS data entry and retrieval terminals throughout the United States, generally in areas with a high concentration of migrant workers and their families.

The basic purpose of MSRTS is to assist migratory children with their education by quickly transferring these students' up-to-date academic and health records from school to school as the children migrate with their parents who are seeking work.

In addition, MSRTS provides student full-time-equivalent counts, which are used by the states and the Federal Government in determining that allocation which I mentioned in regard to the formula a minute ago.

The second 1203 mandated activity is the National Project for Secondary Credit Exchange and Accrual. As they travel with their parents,

migrant students attend many different schools and often encounter difficulty in meeting graduation requirements and receiving a high school diploma in a reasonable period of time or usually on time with their class.

The ultimate goal of this three-year credit exchange project is to develop a system in collaboration with individual states, schools, and national education associations that allows migrant students to retain and accrue credits as they have earned them.

Other projects under Section 1203, the coordination authority, are a Stopover Site and the Program Coordination Centers. The mission of the Migrant Education Stopover Site is the enhancement of inter and intrastate coordination among migrant education programs.

Some of the main functions of the center are identification and recruitment and enrollment of migrant students as they travel with their parents; informing receiving states about migratory farmworker families traveling through the country to the states; and providing migrants with information on educational opportunities and health and social services information available to them at different destinations they may be headed for.

Lastly, the Program Coordination Centers, which were created to improve inter and intrastate coordination among state and local education agencies, are designed to provide services to them as they try to structure programs for migrant students. The Program Coordination Centers: establish activities to strengthen capacity of state and LEAs to meet the needs of migrant children; facilitate the coordination of inter and intrastate programs and projects; enhance the delivery of academic and support services to migratory children and their families; and collect and disseminate information on everything from exemplary practices and programs to other materials that would help in the inter and intrastate coordination of services' delivery to migrant students.

Based on poverty, mobility, limited English proficiency, and other circumstances unique to migrants, the Office of Migrant Education supplements and adapts existing educational services for migrant students by creating additional service systems and coordinating all services to which they are entitled.

Thank you.

Ms. Fisher. Thank you, Dr. Corrigan. You have reviewed an impressive approach to this problem. And I'll be interested in exploring it further with you.

Now we'll hear from Senator John Perry, who is a Senior Project Consultant for the Interstate Migrant Education Council, an 18-state consortium that advocates for migrant students and promotes interstate, interagency, intergovernmental, and public/private coordination for programs for migrant families.

He represented Rochester in the New York Senate from 1975 through 1992 and is a member of the New York Job Training Partnership Council.

Senator Perry?

Senator Perry. Thank you very much.

I was impressed by Dr. Corrigan's testimony. Being a state legislator for 18 years and working on education committees, I know the importance of really understanding the formulas and the statutory language which drive programs.

Dr. Corrigan has explained this. Whether you understand it is another thing. But I can tell you that to really understand the migrant situation in relationship to education, you have to go back to that testimony and cull out the formula and see how that impacts the program. I may allude to some aspects of that in my testimony.

I understand you have my written testimony. I will comment on it in essentially the same order as the written testimony is constructed. First of all, I'm here as a consultant to an organization known as the Interstate Migrant Education Council.

As was mentioned, it's a consortium of states, of 18 states, with over 80 or 85 percent of the migrant students in the nation. We are primarily interested in education issues. That's why we operate under the authority of the chief state school officer of each of these 18 states.

We're primarily interested in education issues, but because we understand that the learning of children is affected by so many other things, we are interested in all aspects of the migrant families' lives, whether it be housing or working conditions, health care, and so forth.

Each state in our organization has three or four representatives, depending upon the number of FTEs, the number of migrant students, in the state. These people are usually advocates for the Migrant Program.

The migrant education director serves in our organization from the state education agency. A chief state school officer serves from the State of Washington, Judith Billings, several state legislators, state board members.

At the present time we have five members of Congress who serve in this organization. Congressman Ford is the chair. Congressman Goodling serves as a representative from Pennsylvania. Congressman Sawyer from Ohio was recently appointed by Ohio.

Two of our IMEC members who were State representative, Maurice Hinchey from New York and Carrie Meek from Florida, were elected to Congress this year. So in that sense, the organization has a political outlook or at least an awareness of how that process works.

What we do is to use the experts in migrant education to examine the critical issues, and then use the expertise of the council members to develop strategies to resolve those problems.

So I would like to focus on two issues that IMEC, the Interstate Migrant Education Council, has highlighted as critical problems. The first is funding. The second is coordination of services or, a better way of stating it from our perspective, the first is the lack of sufficient funding and the second is the lack of sufficient coordination of Federal programs.

First of all, funding. The key to understanding the funding issue is to understand that even though migrant education is a part of Chapter 1, the funding is completely different than Chapter 1. Chapter 1 is driven by census data. Migrant education is driven by annual identification of students.

Each year the program, State by State, must identify the students. And then by the identification of students and the time that they are served developing full-time equivalencies in the state with some other things thrown in, as Dr. Corrigan mentioned, then there is the determination of how much money each state gets out of the \$303 million that were appropriated for this year.

Before 1981 there was one type of formula. And after 1981, there is a new type of formula; in essence, to be as simple as possible. Prior to 1981 every child that was identified by a state received funds. So it was almost an entitlement program.

So the programs could go out. If you identified 100 new students, you would get a certain amount more money right off the top of the appropriation that Congress made for funding of Chapter 1.

In 1981 with the Education Consolidation and Improvement Act of the Reagan administration, that formula was changed. And in a sense what happened was instead of migrant education being an entitlement program it became like other programs, an appropriated program. Congress makes a decision to appropriate a certain amount of money.

Then the FTEs drive the allocation of the appropriation. So that if a state has 10 percent of the total FTEs, they get 10 percent of the 303 million.

And if they increase their FTEs by 20 percent, we'll say, and on the average all of the other states increase their FTEs by 25 percent. They actually get less money for recruiting more children. That is what has been going on for the last 12 years. This is the simplest way I can say it.

Dr. Corrigan has indicated that the numbers of people are increasing. The numbers of children, the FTEs, have gone up considerably.

In 1980 the FTEs were 428,000. In 1992 the FTEs had increased to 773,000. That's an 81 percent increase in the full-time-equivalent students.

Funding in 1980 was 266 million. And in 1992 it was 303 million, an increase of 14 percent: 81 percent increase in FTEs, 14 percent increase in funding over the last 12 years. So the programs are finding kids, but they can't serve them or, else, they have to diminish the services.

So what is happening because of the Federal funding formula or the change in 1981 is we're getting the phenomenon of under-identification. A lot of people aren't being served.

Last year there was a National Commission on Migrant Education, on which Wendell Rollason served. There was also a study commission by the department done by Research Triangle Institute.

Both of these studies had indicated that there are probably far more migrant children out there than are being served. What those numbers would

be and what the methodology is, I can't answer that question, but maybe the two other gentlemen might be able to allude to that.

So the other issue, as I see it, on under-identification is there has been a tendency of the program to serve settled-out kids more so than currently migrant kids. Everyone generally agrees--and Dr. Corrigan mentioned--the program can serve both those people who have moved within the last 12 months and those people who may not have moved but moved once within the last 5 years. They can get services up to five years after they stop. People go in and out of the system. That's a whole very complex issue.

If you have a person that you can identify in Dallas who has settled out and is going to one of the schools in Dallas all year long, but they traveled within the last five years, they are eligible for services in the Migrant Education Program, and they pick up one FTE.

Now, to find someone in a rural area who is currently migrant and may only be in a state for a couple of months is much harder, takes money to find them, to identify them. This is particularly true in the northern states, where people are coming in and going out.

I think the evidence would be it probably costs more on a per-day per diem basis to educate a currently migrant child in a supplemental way, although I would seek other counsel on that.

The point is the programs know that if they recruit a bunch of kids, they probably won't serve them. They're trying to maximize their FTEs. So they recruit the kids that are easiest to recruit--and those are the settled-out children--which is really a denial of the intent, I believe, of Congress to serve the currently migrant up front.

Another issue associated with the funding is relatively small States. There are several States that get less than a million dollars.

How many, Frank, 14?

Dr. Corrigan. Fifteen get less than 500,000.

Senator Perry. Fifteen get less than 500,000. And it may be up to 20 that get less than a million. So if you want someone to run the program, you have to pay them some type of a salary.

But then to operate a recruitment process in a state like South Dakota, big state, but to operate a recruitment process, to identify where these migrants are in these states--and I think South Dakota is one of the states that's close to 500,000--is virtually impossible.

And so we're under-identifying even more. And because they're under-identifying, they don't generate funds. And, therefore, it's very difficult for many of these states to operate a program.

You might ask, "Well, if they have so few kids, why do we operate a program anyway?" Well, you can't think like that in this program because with the currently migrant, they're settled in the south. They're moving through the north, the middle states and to the north. And you don't have a program unless it affects the whole nation.

If you have a relatively small amount, three or four thousand children in Minnesota or something, that's the important part of the program because there are several states in the north that have those programs.

And if you don't have those programs, then you don't have a migrant program because you're not dealing with kids, for example, who come into New York from Florida and they get there until the summer and they stay until picking apples is over with in October and then go back to Gainesville or some place and miss two and a half months of school in Florida.

So if you don't have a northern program, you're not going to have a national program. So all of these are very critical issues for the services rendered.

The consequence over the last 12 years is there has just been a dramatic decline in the funding per FTE. I can't really document state by state what this means to children, but I can look at the aggregate numbers. That's what I'm telling you, that this is something that I believe the United States Congress should deal with to properly serve these people.

I should also note, and I can't emphasize enough--remember, this is a supplemental program--the states provide the basic program. And these children have rights to be in school, certainly. That doesn't mean that those rights are always lived up to fully.

States themselves provide very little money for migrant families. They provide the basic program, but the real money comes from the Federal Government. If it weren't for a Federal program, there probably would be nothing done for migrant students as a specialty in states.

Now, I must say that the State of Florida, where Wendell comes from, does provide money for early childhood. California does provide some money. There are some small funds from states that go in, but it's not high priority by state legislatures, especially for currently migrants and especially in the north, where people know that they're just coming and going.

I have indicated in my testimony and I would say this as an educator and as a legislator it is my judgment the tragedy of this is not only for the children, but the tragedy is what I have seen in the Migrant Program makes it a model program for Americans.

Migrant educators were acting the way people are now suggesting regular education should act in the reform movements of the late 1980s. Before we had the reform movements, migrant educators were dealing with the whole child because they couldn't provide food and clothing, and health services to an extent.

They were dealing with the whole child. They were actively involving parents in the learning process; in my judgment, beyond the letter of the law.

They were providing flexible schedules. You have to when you're dealing with families under these circumstances: early morning classes, summer school classes, evening classes, weekend classes.

Simply, the Migrant Program has been developed to meet the needs of the families and not to force the families to fit into the system, which is what

we're saying has to be done in urban America to stop the dropout problem and to stop the chaos of education in the major cities of America.

So there are still many critical problems. But the program in my judgment is a model program for America. They could do much more for the children, the migrant children, if they had sufficient funds.

There are those things that I've listed in the testimony that these children still face: health problems, pesticides, housing problems, travel problems, attendance problems, language problems. The litany goes on and on and on and on.

Whether they're the most disadvantaged or disadvantaged, I don't know, but they certainly have tremendous challenges and obstacles to overcome to get a full education.

And so I would say that our council advocates considerably more money. We advocate full funding on a formula basis, maybe a big boost.

I'm sure that any congressman would blanch at the idea that we're saying if you really want to do the job for these children, you should fully fund the program such as it was before 1981. That would be an increase from about \$300 million to \$900 million, \$600 million formula-based.

The second area is the area of coordination. As a legislator, this is something that really I can get into because I understand how these things occurs.

I've done a lot of work in my life in job training, and I know that what's happened here is very similar to what has happened in job training. You have a bunch of programs that were started with good intentions under different pieces of legislation at different times, different departments with different jurisdictions.

And I know that even sometimes with administrations that they thought were hostile to the programs, the Congress tried to hide some of these programs in the bureaucracies.

There are four major migrant programs. The Migrant Education Program is the major one in funding. There is a Migrant Health Program. There is a Migrant Head Start Program and the Job Training Partnership Set-Aside, the 402 Program, which will be discussed, in the Labor Department.

There are other programs, minor programs, that Frank mentioned. They are under the jurisdiction of Education: Even Start, HEP, CAMP, High School Equivalency, and the College Program. There's a housing program, which I don't know much about myself.

There are 10 programs in total, four major, six minor, scattered over HUD, DOL, U.S. ED, and Health and Human Services. Head Start and the health programs are in Health and Human Services.

Now, the need for coordination is phenomenal. Dr. Corrigan talked about the efforts now to develop transfer of credits at the high school level. This is something migrant educators have been working on for 15 years.

Now, at least, the federal government has funded a project to try to resolve that. But in the education program, it takes the coordination of 50 states and hundreds of local requirements for graduation and different courses.

The ninth grade course in Florida in social studies I'm sure isn't the same course that it is in New York State, but there are people who come from Florida and go to New York.

If they're only in New York for 12 weeks taking ninth grade social studies, which is Africa and Asia, as I recall, how do you transfer that credit back to Florida if Florida's ninth grade course is whatever it is? I don't know. Maybe it's the history of Florida, for all I know. I mean, there's no relationship.

So you try to do this. It takes a lot of effort. And what it takes is a high visibility to accomplish these things.

Special education. I have mentioned that in my testimony. This is a project in which our council has worked. Here you're dealing with a small group of people, migrants, and then a smaller group who are handicapped, trying to provide services for them as they move from State to State. Almost impossible!

The evidence that we have developed is that still, even though we have tried to highlight this, only one or two percent of the migrant children in school are receiving special education services. And the norm in America is 10 or 11 percent. So they're under-represented, and it's a very difficult process. It takes coordination.

I know. We have brought migrant education and special education directors together and found out they never talk to each other, even though they're in the same building.

I know I'm going on too long. I will just go on in the coordination to point out that the whole zero to five issue now is very important. Fortunately, in this administration, I think this will get its just due.

There is a Migrant Head Start Program. There is an Even Start Program. There is an Education Program that serves 3- and 4-year-olds. It should be brought together.

There may be a breakthrough in this area because last week there was a meeting between Migrant Education and Migrant Head Start, but it's not going to be easy because the two programs are administered by two different departments.

You have received testimony on the health problems. The IMEC council is very interested in all of these issues, but it really is difficult dealing with other departments, other jurisdictions, or other philosophies.

Border issues. I must mention this because this may be the most important thing that we relate to the Helsinki Commission. The international migrancy between Mexico and the United States is causing horrendous problems in Arizona, New Mexico, and Texas: housing conditions and health conditions.

There's no one in charge in a sense. How do you get a handle on this? You've got two jurisdictions, the United States and Mexico, national governments, several states.

And then the problems affect the Labor Department, the Health Department, HHS, and the Education Department, and Housing. In Congress the committees don't fit in these jurisdictions. It's a mess.

But these people are traveling throughout the United States, going to Michigan to pick cherries. Many of them have--I don't know the incidents, but there are incidents of communicable diseases of these people who are traveling.

This is a nationwide problem. And we don't have a system to deal with it. That's why I recommend that the commission look very closely at what is known as the ACUS report of last year, the Administrative Conference of the United States, where they go through all of these 10 programs, look at the definitions, look at the legislative structure, look at the problems, and then they call for a solution, a coordinating solution.

I think at least there has to be some type of advocacy at a higher level. The integrity of the programs can remain within the departments, but somewhere up here, when this administration is dealing with Mrs. Clinton dealing with health care, there should be a migrant input on health care.

And when the Labor Department starts their apprentice program in combination with education, there should be migrant input. And if we get a job service program that the President wants, there should be a migrant input. And if there are new housing policies, there should be a migrant input.

But there isn't going to be a migrant input in those major thrusts of this administration unless all of these people down here have some voice up here under some form. So that is something I would hope the commission would consider.

I've gone twice 10 minutes. Thank you.

Ms. Fisher. That's very interesting. Thank you, Senator Perry. You're illustrating what has been a pattern through all of these briefings, lack of funding, but, most importantly, a lack of political will. If there were political will, we would get some of these things addressed in a far more efficient and prompt manner.

Let's hear now from Mr. William Gross, who is Acting Assistant Administrator for Program Operations, Wage and Hour Division from the U.S. Department of Labor.

Mr. Gross?

Mr. Gross. Thank you.

I want to address a little different area related to the employment of minors. The Wage and Hour Division is responsible for administering and enforcing the Fair Labor Standards Act, which is the general minimum wage and overtime law that also prohibits the employment of oppressive child labor.

The statute has different provisions for child labor relative to agriculture, as opposed to other employment. I think it's important to

understand those differences. What I intend to do this morning is to try and identify those differences for you.

Under the general provisions for child labor, 16 is the minimum age for employment. Individuals 16 years of age and over may be employed for any number of hours, but 16- and 17-year-olds may not be employed in occupations where the Secretary of Labor has determined that those occupations are hazardous. We have hazardous order occupations defined in the regulations where it is prohibited for 16- and 17-year-olds to be employed.

Below that, 14- and 15-year-olds may be employed under regulations that are issued by the Secretary of Labor where it has been determined that it will not adversely affect their schooling or their health and well-being.

Through those regulations, we have placed hours limitations on the employment of 14- and 15-year-olds in addition to occupations that are determined to be hazardous, in which 14- to 15-year-olds may not be employed.

There is a parental exemption, where minors may be employed by their parents. However, minors employed by their parents may not be employed under the general child labor provisions in hazardous occupations.

The statute provides, as I said, exemption from the general child labor requirements for minors employed in agriculture. Under the statutory requirement for minors employed in agriculture, the minors 16 years of age and over may be employed in any farmwork and at any time. There is no limitation on the employment of minors 16 years of age and over in agriculture.

Fourteen and 15-year-old minors may be employed outside of school hours in occupations that have not been declared by the Secretary of Labor to be hazardous. Again, I'll get to those in a minute, but we have declared a number of occupations in agriculture to be hazardous. So that the 14- and 15-year-olds may be employed. No limitation on their hours, but other than it must be outside of school hours.

Twelve and 13-year-olds may be employed outside of school hours in nonhazardous farmwork with the written parental consent or on the same farm where their parents are employed.

Minors 11 and under may be employed outside of school hours in nonhazardous farm jobs with written parental consent on farms where the other employees are not subject to the Fair Labor Standards Act minimum wage requirements.

This is a big distinction between agriculture and the nonagricultural requirements. Minors may be employed at any age in agricultural employment with their parental consent on farms owned or operated by the minor's parents. This includes working in hazardous occupations.

So, unlike the statutory requirement for nonagricultural employment, minors working for their parents on the farms owned or operated by their parents may be employed in any occupation.

Let me briefly run through some of the hazardous order occupations. I won't go through them in their entirety, but I'll run through them quickly.

The first one is the operation of equipment, tractors over 20 horsepower, including attachments to the tractors, corn pickers, cotton pickers, grain combines, hay mowers, and so forth.

The second hazardous order occupation deals with working in yards, pens, or stalls that are occupied by a bull, bore, or stud horse.

The third one deals with the filling, skidding, loading, unloading of timber.

The fourth one deals with working from a ladder or a scaffold, including picking of fruit at a height of over 20 feet.

The fifth hazardous order occupation includes driving, driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or as a helper.

The next one includes working inside fruit, forage, or grain storage designed to retain an oxygen-deficient or a toxic atmosphere.

And the last one deals with the handling or applying of any pesticides identified with a warning label.

In our enforcement of the child labor provisions, not only in agriculture, but also in nonagricultural employment, we have a staff of over 800 investigators throughout the United States, where we conduct investigations in both agriculture and nonagricultural employment.

Any investigation that is conducted by the Wage and Hour Division will include an investigation for illegal child labor employment. This includes every investigation that we do in agriculture. As part of that investigation, we will inspect records, interview employees, and look for illegal employment of minors.

We do this in response to complaints. Any complaint that we receive, especially relative to child labor in agriculture, will generally get priority consideration. We will investigate those complaints almost immediately. But, in addition, we have targeted enforcement, where we will direct our enforcement in areas where we often do not receive complaints.

I think in some of the earlier testimony in previous meetings, it was indicated that we generally do not get a lot of complaints relative to agricultural employment. Similarly, we don't get many complaints relative to child labor in agriculture.

So we have directed or targeted enforcement at those areas. And as part of that directed program, we will target the employment of child labor in agriculture as well.

So we are, I think, very serious about ensuring that employers comply with the standards that have been established, primarily through the statute, but also through regulations in those occupations that have been defined as hazardous. And we make every effort to respond immediately to complaints and to, in addition, direct our enforcement in those areas.

Ms. Fisher. Thank you, Mr. Gross.

We'll hear now from Ms. Hazel Filoxsian, who is a seasonal farmworker herself and founder and Director of the Migrant and Immigrant Assistance Center in Fort Pierce, Florida.

A farmworker for 36 years, she is a member of the National Advisory Council on Migrant Health and serves on the Board of Directors of the East Coast Migrant Health Project. Ms. Filoxsian organized for the United Farmers Union for 2 years.

Ms. Filoxsian. Thank you.

As a current seasonal farmworker and a former migrant farmworker, I can tell you firsthand the reason Wage and Hour in the Department of Labor isn't receiving a lot of complaints of child labor violations, wage and hour violations, labor violations in general.

Last week I was in a grove supervised by a licensed contractor who had a small automatic belted to his hip. I would not file a complaint against him. The reason he could wear the gun on his hip as he supervised his crew of fruit pickers is because our compliance officer couldn't get into the grove. They have no access. We had to work all day under the threat of this guy losing his temper and somebody being seriously injured.

The reason there are not a lot of complaints filed with these departments, first of all, is the fear of repercussion. Regarding child labor in 1988, 15-year-old Antonio Sanchez was killed in a grove in Florida, in Fort Pierce, owned by Evans Property.

When it came to the attention of these agencies, OSHA fined Mr. Evans \$1,000 for this violation. I feel like I must point out to you that that same year Forbes magazine listed Mr. Evans as one of the 10 richest men in the State of Florida.

It took an ambulance-chasing attorney to shake Mr. Evans where he would feel it most. Now when you pass his grove, you see a sign, "No One Under 18 Admitted." Now he complies because he was hit where it hurt the most, in his pockets. One thousand dollars was not even a stiff enough penalty.

In the State of Florida, we have 16 compliance officers to oversee the work of over 5,000 contractors. One among those 16 compliance officers knew that he was not hired to serve the people from his office. At 3 o'clock in the morning, he pulled surprise raids on vans taking people to and from the groves.

He cannot go into the groves. He catches them at the local loading zones. He fines them. He cites them. This is a deterrent to the contractors. But that's one among 16.

What I'm trying to point out to you is from my position, the reason for these problems is lack of enforcement. We have the laws, but they're not worth the paper they are written on if they're not properly enforced.

In 1991 Willie Simmons, a contractor in Putnam County, Florida, forced 11 men onto a van that had no brakes, no seats. They were forced to ride sitting on boards thrown across cement blocks.

A rock-hauling truck ran a stoplight in Lake County--they were en route to work--broad-sided the van. Four of those men were killed. Seven were injured. And I'm sure you know once the van was hit, those blocks were like missiles.

The van had not been inspected. No one could come onto the labor camp because in the State of Florida, we don't have the access law.

Farmworker advocates can't get into camps or fields. Growers and contractors rely on the private property law. Even though these workers were paying rent, they cannot have anyone onto the grower's or the contractor's property.

So it's like everything there, the workers are there. They have the laws, but they are not protected by the laws because of the lack of enforcement.

And with the children and the education, I can also tell firsthand there's a reason for problems in these areas, especially with the migrant children. They get into the school system late.

I started school when I was 9 years old. I was 9 years old in the first grade. And that was only because officials forced my mother to enroll me. And then the children leave school early.

I have often thought to myself: What would happen if the home state for workers--for example, Florida, with the largest population of migrant workers and farmworkers--had a day camp-like atmosphere for migrant children. A system with camp activities, a school environment, staffed educators, and medical people, so when parents who had to go north for the harvest when school was in could leave their children, go to the harvest, and come back and their children's education would have continued?

The reason for the high rate of dropouts among migrants is: What 16-year-old wants to sit in a fifth grade class? Because that's the level they have to learn at when leaving early and starting late?

If the education of this 15-year-old could have continued while his parents were in the field, when he returned to public school, he would have been up with the rest of his classmates. That's the reason for the dropouts.

I wouldn't do it. I wouldn't want to do it. And it seems like such a simple solution, so we are pursuing it further. We are talking to private organizations that are willing to fund something like this.

We have beautiful natural surroundings in Florida, the perfect place for acreage to develop a camp like this. We have educators who would donate their time. Professors at some of the universities in Gainesville have already committed to coming out as have nurses and doctors.

And with this little girl--I started to read this paper, but it brought back so many painful memories, I couldn't get past her picture here.

About every two years in Fort Pierce, there is an auction. Old school buses are auctioned off, the little short mini vans and the larger buses.

For parents like the Santiagos, if they're isolated from day care, instead of auctioning off those school buses, what if one of those buses were donated

to a day care center in Fort Pierce, for example, for the use of going to these areas where we know the migrants are living, picking up the children, bringing them to the day care, and returning them home, instead of just auctioning the buses off and most of the people who get them are farm labor contractors and they take the people to the northern harvest and bring them back? It would be a solution to the problem.

I mentioned to some of you before the meeting started that one of our representatives in the State of Florida was given a tour of one of our labor camps.

We went to a small RV like this, and there was a little boy--I think he was about four years old--left inside alone with a rope tied to his hand and the other end tied to the bed. There was enough room for him to get to the food that had been left for him and have access to the bathroom. That was the mother's only means of restraint. That was her day care.

I have about 17 senior citizens that have committed to going into these areas, volunteering their time 2 or 3 days for one person, offering day care, but they can't get into those labor camps because our legislature won't pass the access clause in the State of Florida.

It would seem to me that if more of our elected officials were sensitized to the issues concerning farmworkers, if we had more friends in the decision-making positions, if they would remember their campaign promises, that a lot of these problems that we have with education, with health care, with the availability or accessibility of health care to migrant farmworkers, would be solved. It just does not seem that hard to me.

In the states that we migrated to during the time that I was a migrant farmworker, my only problem with getting health care was that I was on a labor camp 20 or 30 miles from the world, and I was afraid to leave.

In 1984 in Wilson, North Carolina, I was literally held against my will on a labor camp. Pirate vans roamed the roads. And if you were caught walking, you were kidnapped and sold. In 1984 in the United States of America, you were sold to the contractor who could afford to pay for you. And your worth depended upon your physical ability. There was health care available to me. I just couldn't get to it.

Department of Labor officials, the Legal Services Corporation tried numerous times to come into the labor camp to tell us what our rights were, to tell us where we could go for help.

We lived on this camp two weeks. It rained, and we couldn't work. They weren't allowed to come in and give us food vouchers until well into the second week. We had to eat the slop prepared by the contractor and pay for it whether we ate it or not.

We're talking about a very special group of people here. Numbers and figures and statistics are good for those of you who can deal with it. I have to deal with the pain of being a forgotten member of this country's population. I have to deal with setting your tables every single day of my life and being underpaid and being exploited.

I guess the most painful thing about this story on little Ada is the date, 1992. And I'm thinking back to 1956 in Belle Glade, FL, when I was exactly 6 years old. It hasn't changed, hasn't changed. And that's the saddest part about it.

But there are solutions to these problems. And they're not going to be solved until we can get people, as the Senator mentioned, advocates higher up, people who are sensitive to these issues. And until then we're going to remain the forgotten portion of the population.

The monies are there. The services are there. But what good are they if farmworkers have no access to them? What good are they if we don't have a friend at the top to see that these funds are properly allocated?

And that's the reason I try and take advantage of every opportunity to come before you to remind you and those in the decision-making positions that we are not going to go away.

Our problems are not going to go away until someone at the very top or someone from this position has access to the top and can make our needs known.

Ms. Fisher. Thank you very much for that very compelling testimony.

We will hear next from Mr. Wendell Rollason, who is Executive Vice President of the Redlands Christian Migrant Association, Immokalee, Florida. He has worked with migrant and seasonal farmworkers for 43 years.

He chaired the Governor's Advisory Council on Farmworker Affairs for 13 years and is a member of the National Commission on Migrant Education. Mr. Rollason is also Vice Chair of the Florida Interagency Coordinating Council for Infants and Toddlers.

Mr. Rollason?

Mr. Rollason. Thank you, Madam Chairman.

You will see an interesting contrast from the two members of this panel who are from Florida. Be mindful of the fact that from the position of Ms. Filoxian as a farmworker herself, you cannot possibly from the outside--and I'm speaking of myself. Although I have been in this work for 43 years, nobody from my side of society could possibly understand what the migrant farmworkers over the years have had to endure all across the country.

From my point of view, there have been some remarkable changes for the better in Florida in the lives of migrant farmworker families who have access to facilities that are wholly inadequate for the entire population. But you make your progress the best you can.

Education of the migrant child--and I will deal with Florida, even though there are occasional references elsewhere, because I am closely associated with the schools, in combat with the schools and the health clinics, the health facilities.

Our migrant child anywhere is associated with the reality that our schools are designed for the middle class family. They get 80 percent of the attention.

It's no wonder that in society, 20 percent from the poor cause 75 percent of the problems of education today because the schools do not address the problems of poor kids.

In this, I am speaking of the working poor. In the rural working poor in Florida, 85 percent of those folks earn their living in agriculture. My definition of the working poor is the man or woman who works at least 40 hours a week and does not earn enough money for him and his family to live decently.

I want to comment on the Migrant Education Program and not to be repetitious of Dr. Corrigan or Senator Perry. They have both given you a good picture. I think, particularly, the problems that are emphasized by Jack Perry are things for those of you who are interested in these matters to pay attention to.

It is, as indicated, woefully under-funded. Amongst the migrant families, as with the urban poor family--working poor I'm speaking of solely--the schools resist involving the parents in the education process.

The Committee on Economic Development in New York, which is a mirror reflection from Fortune 500 folks, states in their report "Children In Need" that came out, I think, in 1988 that the key--and I am saying the key, not a key, but the key--to children from poverty families obtaining a good education is the degree to which their parents have been involved.

Obviously, the working poor cannot have access to the schools on a 7:30 to 3:30 basis. Our society has got to address that fact and to know that they have got to involve their parents, convince their parents that they are interested in their kids.

Our view in Florida is that 85 percent of the migrant parents feel that the schools don't want their children. And they're about 50 percent correct. That is certainly a major factor. And I will add to Ms. Filoxsian's view as to the dropout problems that we have.

Migrant Head Start is a division of the regular Head Start, but the legislation is a component of that act. And it again is a case of being under-funded.

This morning Washington Post contains some criticism of Head Start. I suppose that that report is factual as far as it went. But everybody in those positions making those statements and in the schools themselves do not comprehend the Head Start beauty and its worth and its achievements, despite those criticisms, because it involves the parents.

The parents in Head Start programs know that they have a piece of the action. Hopefully, this awareness turns over into the schools, and the parents will become there the advocate of their child.

The criticism that the benefits of Head Start do not last is ludicrous. Are you going to expect a program like this to prepare kids for college? Public schools do not pick up where these very impressive programs leave off.

Migrant Head Start is an infant through age 4 or the 5-year-olds that by age have missed first grade. It is a more tightly controlled from Washington,

which is supposedly a no-no. But let me tell you that the only support, meaningful support, within the educational process that poor kids get is the federal strings to the appropriation.

If, as seems indicated, the present administration is talking about just channeling to the states these funds, it will be a sad day for poor kids in our public school system when there are no federal inspections and monitorings.

My copy of this announcement of this hearing mentioned child labor. Let me, therefore, say a few things about that as I see it in Florida. Over 43 years there has been a magnificent lessening of child labor.

In my organization we have taken the position long ago that these kids need the help of the power structure. You can trod the path of advocacy and making agriculture the bad guys from here to eternity, and agriculture is going to circle their wagons.

We set about to involve agriculture in our child development programs. As a consequence, the State of Florida--and I'm not counting. Our legislature is in session, and it may all go down the tubes.

But as of this minute, for example, we get the schools with the migrant education preschool program gets an additional solid shot in the arm for \$3.5 million annually so that hundreds of more migrant preschoolers are in safe and good child development. And that is solely due to the power of agriculture.

We took the position within our own organization circle that the only one of the multiple power structures that exist anywhere in any state or the country that has a vested interest in these kids is agriculture.

So we have been able, if I can put it this way, to separate the good guys from the bad guys. And whether they're doctors or presidents of savings and loans or plumbers or whatever, there are good guys and bad guys everywhere in every profession.

In Florida as far as child health, child education, when I need help, I go to agriculture. We had the fight last session of the 3.5 million being dropped, and agriculture put it back in the state budget.

So I mention this because I feel that in agriculture, if we can recognize, as we do in every profession else, that there are good guys and we cultivate them, give them a place to stand, that insofar as the children are concerned, they are going to become, can become nationwide, the same strong allies that they are for kids in Florida.

Now, we have been seeing in the last three years particularly a new phenomenon that has me tremendously worried about young people. We are getting 13, 14, 15, 16-year-old boys coming in from Mexico unaccompanied by families. The disastrous deterioration of rural Mexican economy is turning these kids northward for survival.

Now, the culture is different. The rural culture of these boys, as I refer to them deliberately, are young men. They come here with a commitment to work. So they get, as our commission found, all over agriculture in the United States. But let me talk from Florida.